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April 2, 2013

The Honorable Paul Holvey, Chairman
House Committee on Consumer Protection & Government Efficiency
900 Court Street, N.E., Room 453
Salem, Oregon 97301

RE: HB 3174
Applicability of Federal Exemption to State Judgments

Dear Chairman Holvey:

Thank you for giving me the opportunity to testify before your committee on the importance of HB 3174, repeal of the prohibition against use of Federal Exemptions under 11 U.S.C. §522(d) in bankruptcy cases filed in the state of Oregon. This letter is intended to supplement my testimony and answer some questions put forth by testimony in opposition to the bill.

There were several matters questioned by professional lobbyist, Jim Markee, and attorney Paul Cosgrove. In essence, Mr. Markee questioned whether or not repeal of ORS 18.300 would subject the collection of Oregon judgments to the limitations contained in Federal bankruptcy statutes. There was also some question expressed as to whether or not the two different sets of exemptions, the federal exemptions and the Oregon exemptions, could be used simultaneously. I can answer both questions with an unequivocal "No."

The statutory federal exemptions are applied in bankruptcy cases alone. I have asked an attorney in my office, Alex Olenick, to research the matter. After extensive research, Mr. Olenick has been unable to find a single court case in any of the 19 jurisdictions where Federal exemptions are permitted, in which the exemptions contained in the bankruptcy code were applied to defeat a state court judgment creditor outside the confines of a bankruptcy proceeding. His memorandum of law is included with this letter.

As to the simultaneous use of both sets of exemptions, the answer is equally clear. A 1985 Bankruptcy Court opinion from Vermont stated this clearly. "It is well settled that an individual debtor may exempt from property of the estate either property that is specified under subsection (d) of Code section 522 (as set forth in Code subsection 522(b)(1)); or, in the alternative, any property that is exempt under state or local law..." In Re Lawson, 45 B.R. 686, 687 The application of exemptions listed in state statute in a bankruptcy case in addition to the exemptions permitted under 11 U.S.C. §522(d), is expressly prohibited in the bankruptcy code. The matter was anticipated and resolved definitively by Congress.

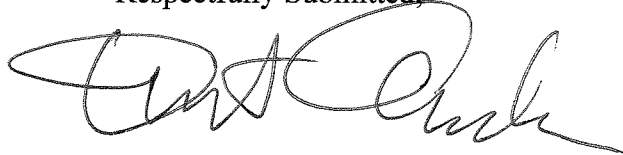
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Mr. Cosgrove posed the question of whether or not repeal of the statute might impose federal exemptions due to the loss of the language "Nothing in this section shall affect the exemptions given to residents of this state by the Constitution of the State of Oregon and the Oregon Revised Statutes." However, based on Mr. Olenick's research, federal exemptions cannot be used in state court proceedings and repeal of this language would have no unexpected consequences.

Finally, Mr. Markee referred to the Oregon exemption of certain funds deposited in a financial institution account in his comments. While it is true that up to \$7,500 is protected by ORS 18.348, the funds must have come from an exempt source under federal law such as Social Security benefits or an enumerated exempt source under state law, including retirement plan distributions and exempt wages.

Please let me know if there are additional questions that I can answer for you or any other member of the committee.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kent Anderson", written in a cursive style.

Kent Anderson
Oregon Chair NACBA