

Memorandum 74-17

Subject: Study 39.120 - Creditors' Remedies (Execution--Exemptions)

Attached to this memorandum is a copy of Chapter 5 (Exemptions) of the staff draft of the execution title presented at the March meeting. This material has not been revised because the Commission did not have time to consider most of it at the last meeting. Also attached are a copy of Appendix II containing conforming changes required by the exemption revisions and a law review comment on the household goods exemption, 12 Santa Clara Lawyer 155 (1972).

In the near future, the staff plans to send supplementary memorandums on the homestead exemption and on the problems concerning the exemption of health, disability, and life insurance.

Respectfully submitted,

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CHAPTER 5. PROPERTY SUBJECT TO EXECUTION:
CLAIMING EXEMPTIONS; EXEMPTIONS

Article 1. Property Subject to Execution

§ 705.010. Property subject to execution

705.010. Except as otherwise provided by Section 705.020, all real and personal property of a judgment debtor, not exempt by law, is subject to execution.

Comment. Section 705.010 is substantively the same as the first sentence of former Section 688. Deletion of the reference in former law to 'any interest' in property and of the enumeration of certain types of property ('goods, chattels, moneys or other property . . .') is not intended to limit in any way the scope of property subject to execution. Similarly, property which has been previously levied upon under attachment in the action is still considered to be property of the judgment debtor for the purposes of this section and is therefore subject to execution. Section 705.010 excludes from its operation property "exempt by law." See Articles 2 (commencing with Section 705.210), 3 (commencing with Section 705.610), and 4 (commencing with Section 705.710) (specific property which is exempt from execution). See also Emeric v. Gilman, 10 Cal. 404 (1858) (assets of citizen of county not liable for county debt); Health & Saf. Code § 7053 (misdemeanor to attach human remains for debt). Property in custodia legis is not subject to execution under certain circumstances. See, e.g., Robbins v. Bueno, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968); North v. Evans, 1 Cal. App.2d 64, 36 P.2d 133 (1934); Hawi Mill & Plantation Co. v. Leland, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 21-24 at 3402-3405 (2d ed. 1971). See also Estate of Lawrence, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968) (spendthrift trust).

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§ 705.020. Causes of action, licenses not subject to execution

705.020. (a) No cause of action which is the subject of a pending action or special proceeding is subject to execution; however, a judgment

creditor of any party to the action or special proceeding may apply pursuant to Section 702.170 for a lien upon the cause of action. No judgment owing to a judgment debtor is subject to execution until after its entry as a final judgment and the time for appeal from such judgment has expired or, if an appeal is filed, until such appeal is finally determined.

(b) Licenses issued by this state to engage in any business, profession, or activity are not subject to execution.

(c) Estates at will are not subject to execution.

(d) Property of the state as defined in Government Code Section 900.6 is not subject to execution.

(e) Property of a local public entity as defined in Government Code Section 900.4 is not subject to execution to enforce a tort judgment.

Comment. Section 705.020 provides exceptions to Section 705.010 (property subject to execution). Subdivision (a) of Section 705.020 continues the substance of a portion of former Sections 688 and 688.1. See also Sections 488.420(c) and 702.170. The purpose of the first sentence of subdivision (a) is to make Section 702.170 the exclusive method for proceeding against a cause of action which is the subject of a pending action. Prior to suit and after final judgment as provided in the second sentence of subdivision (a), levy may be made pursuant to Section 704.240 (manner of levy). See also Section 702.130 (collection on account receivable, chose in action, deposit account, or judgment). Rights acquired by such levy are not lost by the commencement of a suit. Moreover, a judgment creditor may, after levy, himself bring an action against a debtor of the judgment debtor. See Chapter 8 (commencing with Section 708.110). Section 705.020(a), however, applies where no levy has been made until suit has commenced.

Subdivision (b) of former Section 688.1 provided that an assignee by operation of law of a party to a personal injury action may not acquire any interest in or lien rights upon any money recovered by such party for general damages. This provision has not been continued because it was held unconstitutional in In re Kanter, 345 F. Supp. 1151 (S.D. Cal. 1972).

Subdivision (b) of Section 705.020 continues the substance of a portion of former Section 688.

Subdivision (c) of Section 705.020 continues the substance of a portion of former Civil Code Section 765.

Subdivision (d) recognizes that execution is not available to enforce judgments against the state. See Meyer v. State Land Settlement Board, 104 Cal. App. 577, 286 P. 743 (1930). See also Govt. Code §§ 965-965.4.

Subdivision (e) recognizes that Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of the Government Code provides the exclusive manner of enforcing tort judgments against local public entities. See Section 705.380 (providing an exemption for property of local public entity where a nontort judgment is sought to be enforced).

Note. As the Comment to subdivision (a) indicates, the provision purporting to prevent assignees by operation of law from acquiring an interest in general damages in a personal injury action is not continued because it is unconstitutional. In Carmona v. Robinson, 336 F.2d 518 (9th Cir. 1964), the court held that the title to a pending cause of action vests in the trustee in bankruptcy under Section 688.1 of the Code of Civil Procedure and Sections 70(a)(5) and 70(c) of the Bankruptcy Act. However, in 1970, the language quoted in the Comment was added as subdivision (b) to Section 688.1. The referee in bankruptcy in the Fanter case obtained a letter from Assemblyman Z'berg, the bill's sponsor, which stated that the latter's intent was to take general damages in personal injury action out of the bankrupt estate. Z'berg wrote, 'In my opinion the phrase '. . . assignee by operation of law . . .' includes only a Trustee in Bankruptcy.' While there may be other assignees by operation of law, Z'berg indicated that he did not know of any and that the language was selected on advice of the Legislative Counsel in order to achieve his objective. The court in In re Kanter, 345 F. Supp. 1151 (S.D. Cal. 1972), found that the purpose of Section 688.1(b) was to deprive the trustee of such general damages and that, regardless of the intention of the subdivision, its effect was to prevent the proper administration of the Bankruptcy Act. Hence, the court found that Section 688.1(b) denied equal protection and contravened the supremacy clause.

While most licenses to conduct a business are either not transferable or are not worth transferring, liquor licenses are valuable, transferable property. However, the exclusive method for transferring liquor licenses is provided by Business and Professions Code Section 24074. Liquor licenses are transferable only with the approval of the Department of Alcoholic Beverage Control. Liquor licenses are also subject to various controls concerning, for example, qualifications of licensees and the number of licenses per county, which make the normal execution sale inappropriate. See Bus. & Prof. Code § 24070 et seq. Jackson states in California Debt Collection Practice, Section 9.65 (Cal. Cont. Ed. Bar 1968), that a liquor license is considered as an asset of a bankrupt and may be sold in the bankrupt's estate but that the "buyer is confronted with the necessity of obtaining approval of the sale and of himself as a licensee by the board."

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It may be that a creditor can force a voluntary sale of the debtor's license by levying on all other nonexempt assets of the debtor. If the Commission thinks that it might be useful to allow execution against liquor licenses, the staff will further investigate the sort of procedure that would be needed to be in harmony with the statutes regarding such licenses.

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§ 705.030. Claim of exemption

705.030. (a) Except as otherwise provided in Section 705.610, if any property described as "exempt" in Article 2 (commencing with Section 705.210) or Article 3 (commencing with Section 705.610) is levied upon, the judgment debtor may claim an exemption therefor by serving on the levying officer within 10 days from the date of levy an affidavit signed by the judgment debtor or his agent, together with a copy thereof, which contains all of the following:

(1) A description of the property levied upon which is claimed to be exempt.

(2) A citation of the section in Article 2 (commencing with Section 705.210) or Article 3 (commencing with Section 705.610) or other law upon which the judgment debtor relies for his claim of exemption.

(3) A statement of facts necessary to support his claim of exemption.

(4) Points and authorities supporting any legal issues raised.

(5) The judgment debtor's name and address within this state for the purpose of permitting service by mail upon him of the counteraffidavit provided by subdivision (c) and the motion provided by subdivision (e).

(b) Upon receiving the affidavit from the judgment debtor, the levying officer shall immediately serve upon the judgment creditor a copy of the affidavit, together with a statement in writing signed by the levying officer, that the claim of exemption has been received and that the levying officer will release the property unless he receives from the judgment creditor

a counteraffidavit within five days after service of the affidavit and levying officer's statement.

(c) If the judgment creditor desires to contest the claim of exemption, he shall, within five days after service of the judgment debtor's affidavit and the levying officer's statement, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section of this chapter or other law relied upon or that the value of the property claimed to be exempt is in excess of the value stated in the applicable section. The judgment creditor shall serve a copy of the counteraffidavit on the judgment debtor and include proof of such service with the counteraffidavit filed with the levying officer.

(d) If no counteraffidavit with proof of service is filed by the judgment creditor with the levying officer within the time allowed, the levying officer shall immediately release the property.

(e) If the judgment creditor's counteraffidavit with proof of service is filed pursuant to subdivision (c), either the judgment creditor or the judgment debtor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim of exemption or the value of the property claimed to be exempt. The hearing shall be granted by the court upon motion of either party made within five days after the judgment creditor's counteraffidavit is filed with the levying officer. The hearing shall be held within 15 days after the motion is made unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party and shall specify therein that the hearing is for the purpose of determining the claim of exemption.

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(f) If neither party makes a motion for a hearing within the time allowed or if the levying officer is not served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall immediately release the property to the judgment debtor.

Comment. Section 705.030 is substantively the same as subdivisions (a)-(f) of former Section 690.50. The procedure provided in Section 705.030 is applicable where the judgment debtor desires to claim an exemption for property described as "exempt." Article 2 (commencing with Section 705.210) provides both for exemptions which must be claimed and exemptions which need not be claimed. See Section 705.210. If property which is "exempt without making a claim of exemption" is levied upon despite its exempt status, the procedure of Section 705.030 must be utilized to claim the exemption. However, as provided in Section 705.040, such a claim may be made at any time prior to sale or other disposition of the property. An important difference between a levy on property which is "exempt" and a levy on property which is "exempt without making a claim of exemption" is that, if the judgment creditor levies upon the latter, he is liable to the judgment debtor for wrongful execution. See Section 710.110 (wrongful execution). A separate procedure is provided to determine the validity of exemptions selected by the judgment debtor pursuant to Article 3 (commencing with Section 705.610) since in such cases there is no levy.

Note. Should the procedure be different where the judgment creditor mistakenly (or purposefully) levies on property which is exempt without making a claim of exemption? Would this be easier to understand if property described as "exempt without making a claim of exemption" were described as "not subject to execution"?

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§ 705.040. Property exempt without making a claim; claim of exemption

705.040. If property described in Article 2 (commencing with Section 705.210) as "exempt without a claim of exemption" is levied upon, the judgment debtor may obtain its release from levy by following the

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procedure provided by Section 705.030 except that the procedure may be initiated at any time [prior to sale or other disposition of the property].

Comment. Section 705.040 provides that the procedure for claiming exemptions provided by Section 705.030 applies as well where the judgment creditor levies upon property which by statute is specifically stated to be "exempt without making a claim of exemption." Levy on such property should occur only rarely, if ever. See Section 710.110 (wrongful execution liability for levy on property exempt without making a claim). Note that the 10-day period within which a claim of exemption under Section 705.030 normally must be made is not applicable to claims under Section 705.040.

Note. Should the sale or other disposition of the property be invalid?

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§ 705.050. Contest of selection

705.050. (a) If the judgment creditor desires to contest the selection or the valuation of the property selected by the judgment debtor as provided in Article 3 (commencing with Section 705.610), the judgment creditor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the validity of the selection of exempt property. The hearing shall be granted by the court upon motion of the judgment creditor made within 10 days after the judgment debtor makes his selection. The hearing shall be held within 15 days after the motion is made unless continued by the court for good cause. The judgment creditor shall give not less than five days' notice in writing of such hearing to the judgment debtor and shall specify therein that the hearing is for the purpose of determining the validity of the selection of exempt property.

(b) The notice provided by subdivision (a) shall be accompanied by an affidavit signed by the judgment creditor which contains all the following:

(1) A description of the property selected by the judgment debtor pursuant to Article 3 (commencing with Section 705.610) which is claimed not to be exempt.

(2) A citation of the section in Article 3 (commencing with Section 705.610) which supports the judgment creditor's claim that the property is not exempt.

(3) A statement of facts necessary to support his claim.

(4) Points and authorities supporting any legal issues raised.

(5) The judgment creditor's name and address within this state for the purpose of permitting service by mail upon him of the judgment debtor's counteraffidavit.

(c) If the judgment debtor desires to oppose the contest of selection, he shall file and serve on the judgment creditor, not less than two days before the date set for the hearing, a notice of opposition to the contest of selection, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the judgment debtor fails to oppose the judgment creditor's contest of selection, the judgment debtor may not later claim an exemption for property claimed by the judgment creditor not to be exempt unless the judgment debtor shows changed circumstances.

Comment. Section 705.050 is new. It provides a procedure whereby the judgment creditor may challenge the validity of exemptions provided in Article 3 (commencing with Section 705.610) which allows the judgment debtor to select property of a certain type up to a maximum value--e.g., household goods (Section 705.620) and tools (Section 705.630). If the judgment debtor selects property under the provisions of Section 705.610, then the

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judgment creditor may contest such selection as provided in Section 705.050. However, if the property described in Article 3 (commencing with Section 705.610) is levied upon--whether the judgment debtor was not present when levy occurred or did not wish to exercise his right to selection--the exemption procedure provided by Section 705.030 is followed. The judgment creditor may use the procedure of Section 705.050 to contest either the validity of including certain property in the categories provided in Article 3 or to contest the value assigned to property selected.

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§ 705.060. Affidavits, counteraffidavits, pleadings, burden of proof

705.060. (a) The affidavits and counteraffidavits delivered to the levying officer shall be filed by him with the court and shall constitute the pleadings subject to the power of the court to permit an amendment in the interests of justice. The judgment debtor's affidavit provided by Section 705.030(a) shall be deemed controverted by the judgment creditor's affidavit provided by Section 705.030(c). The judgment creditor's affidavit provided by Section 705.050(a) shall be deemed controverted by the judgment creditor's affidavit provided by Section 705.050(c). All such affidavits shall be received in evidence.

(b) At any hearing under this article, the party claiming an exemption for property shall have the burden of proof.

Comment. Section 705.060 is substantively the same as part of former Section 690.50(1). The third sentence of subdivision (a) of Section 705.060 makes clear that affidavits under the new procedure provided by Section 705.050 are treated in the same manner as affidavits under Section 705.030.

Note. Should the debtor have the burden where property alleged to be exempt without making a claim of exemption is levied upon?

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§ 705.070. Maintain levy until determination of claim

705.070. The levying officer shall maintain the levy on all property levied upon pending the final determination of the claim of exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim of exemption so provides.

Comment. Section 705.070 is substantively similar to former Section 690.50(h). Section 705.070 uses the term "maintain the levy in place of the provision of former law that the levying officer retain physical possession of the property . . . capable of physical possession" and that the levy on "property not capable of physical possession . . . remain in full force and effect." This usage reflects a change in levy procedures from former law. See Section 704.240. Section 705.070, as did former Section 690.50(h), simply requires the levying officer to preserve the status quo by maintaining the levy in whatever form it takes.

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§ 705.080. Orders during pendency of proceedings

705.080. At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings upon such terms as may be just.

Comment. Section 705.080 is identical to former Section 690.50(g).

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§ 705.090. Findings; continuance for production of evidence; judgment

705.090. No findings shall be required in a proceeding under this article. When the hearing is before the court sitting without a jury and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim of exemption shall be allowed or not, in whole or in part, which judgment shall be determinative as to the right of the judgment creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment, the court shall make all proper orders for the disposition of such property or the proceeds thereof.

Comment. Section 705.090 is identical to part of former Section 690.50(1).

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§ 705.100. Release or continuance of levy

705.100. (a) A copy of any judgment entered in the [trial] court shall be immediately transmitted by the clerk to the levying officer in order to permit the levying officer to either release the property levied upon or to continue the levy in order to [collect or] sell the property in accordance with the provisions of the writ. Unless an appeal from the judgment is waived or the judgment has otherwise become final, the levying officer shall maintain the levy until such judgment becomes final.

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(b) Notwithstanding subdivision (a), if a claim of exemption under Section 705.220 is allowed by such judgment, the judgment debtor is entitled to a release of the earnings so exempted at the expiration of three days unless otherwise ordered by the court or unless the levying officer is served with a copy of a notice of appeal from the judgment.

Comment. Section 705.100 is substantively identical to former Section 690.50(j).

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§ 705.110. Prohibition against levy on property determined to be exempt

705.110. If exemptions are allowed pursuant to Section 705.030 or if the judgment creditor fails to contest a selection within the time allowed by Section 705.050, the property thereby exempt may not be levied upon in any proceeding to enforce the judgment based upon which execution was sought to be levied unless the creditor shows that a change in circumstances occurring after the property was determined to be exempt makes the exemption invalid.

Comment. Section 705.110 is new. This section makes clear that the judgment creditor may not levy upon property where it has been determined to be exempt in an exemption proceeding or where he has failed to contest a judgment debtor's selection of exempt property under Article 3 (commencing with Section 705.610). See Section 705.050. Of course, the judgment creditor may never levy upon property which is not subject to execution. See Section 705.020. Section 705.110 prohibits levy upon such property only where the judgment creditor is still attempting to enforce the same judgment that provided the basis for the first levy. However, the judgment creditor may levy again on property if he shows that a change in circumstances after the exemption was allowed or after he failed to contest a selection of exemption now makes the property nonexempt.

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§ 705.120. Appeal

705.120. An appeal lies from any judgment under this article. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

Comment. Section 705.120 is substantively identical to former Section 690.50(m).

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§ 705.130. Exemptions cumulative

705.130. Except as otherwise provided by statute, the exemptions provided by Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) are cumulative.

Comment. Section 705.130 makes clear that the judgment debtor is entitled to claim as many exemptions for his property as the law provides. Hence, for example, if a motor vehicle which the judgment debtor uses in his trade meets the criteria of the exemption provided in Section 705.240, he may obtain an exemption under that section and apply the entire \$2,500 exemption of Section 705.630 to his tools.

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§ 705.140. Exemptions from other process

705.140. Except as otherwise provided by statute, property exempt from execution pursuant to this chapter is exempt from forced sale and from levy of any other process for the collection of debts.

Comment. Section 705.140 makes clear that the exemptions provided in Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) exempt

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property from any process for the collection of debts whatsoever unless a statute otherwise provides. See Section 487.020 (execution exemptions incorporated by Attachment Law). Section 705.150 provides an exception to this general principle where execution is issued on a judgment recovered for the purchase price of the property which would otherwise be exempt or where execution is issued upon a judgment of foreclosure of a mortgage or other lien on such property.

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§ 705.150. Exception; judgment for purchase price or foreclosure

705.150. The exemptions provided by Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710) do not apply where execution is issued upon a judgment recovered for the purchase price of the property or upon a judgment of foreclosure of a mortgage or other lien on the property.

Comment. Section 705.150 is substantively similar to former Section 690.52.

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§ 705.160. Exemptions from tax liability

705.160. Where a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Article 2 (commencing with Section 705.210), Article 3 (commencing with Section 705.610), and Article 4 (commencing with Section 705.710); and the provi-

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sions of this article shall be applicable to the assertion and determination thereof. The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court.

Comment. Section 705.160 is substantively the same as former Section 690.51.

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§ 705.170. Jury trial; waiver

705.170. Nothing in this article shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action.

Comment. Section 705.170 is identical to part of former Section 690.50(1).

Note. The staff plans to do further research to determine whether this provision has any meaning with a view toward deleting it if it does not.

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Article 2. Exemptions

§ 705.210. Claimed and unclaimed exemptions

705.210. (a) Where property is described in this article as 'exempt,' a claim of exemption shall be made pursuant to Section 705.030.

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(b) Where property is described in this article as "exempt without making a claim of exemption," no claim of exemption need be made pursuant to Section 705.030 except as otherwise provided by Section 705.040.

Comment. Section 705.210 is similar to subdivisions (a) and (b) of former Section 690. It explains the usage of the terms "exempt" and "exempt without making a claim of exemption" as used in this article.

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§ 705.220. Paid earnings

705.220. Earnings of the judgment debtor which have been paid to him and are retained in the form in which paid or as cash are exempt to the extent they are essential for the support of the debtor or his family.

Comment. Section 705.220 is substantively identical to former Section 690.8a.

Note. Section 690.8a is in the wage garnishment recommendation. Subdivision (c) of Section 690.6 is the current provision.

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§ 705.230. Deposit accounts in banks, savings and loan associations, and credit unions

705.230. Any combination of deposit accounts in banks, state or federal savings and loan associations, and credit unions, and shares of stock of state or federal savings and loan associations is exempt to the maximum aggregate value of [two] thousand dollars (\$[2],000) per person, whether the character of such property is separate or community.

Comment. Section 705.230 combines the substance of former Section 690.7 (\$1,000 savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and former Financial Code Section 15406 (\$1,500 in credit unions) and extends the exemption to bank

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accounts. Hence, under Section 705.230, \$2,000 is exempt when a claim is made pursuant to Section 705.030 regardless of whether the account or share is in a bank, savings and loan association, or credit union, or any combination thereof. See Section 705.390 (funds of prisoner).

Note. The \$2,000 limit is arbitrary. As the Comment indicates, under current law, a wise debtor with accounts properly located may exempt \$2,500 whereas a debtor with only a savings and loan account can exempt only \$1,000, and a debtor with only a bank account has no exemption.

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§ 705.240. Motor vehicle; proceeds of sale

705.240. (a) One motor vehicle with a value not exceeding five hundred dollars (\$500), over all liens and encumbrances on such vehicle at the time of levy, is exempt [provided that the total value of such vehicle does not exceed one thousand dollars (\$1,000)]. The value of the motor vehicle is determined from that set forth for a motor vehicle of that year and model in established used car price guides customarily used by California automobile dealers or, if not listed in such guides, its fair market value.

(b) If such motor vehicle is sold, the proceeds of sale, after satisfaction of all liens and encumbrances on such vehicle, are exempt to a maximum amount of five hundred dollars (\$500) for a period of three months after sale.

Comment. Section 705.240 continues the substance of the first paragraph and the last sentence of former Section 690.2.

Note. The staff questions the policy behind the \$1,000 limit on total value. For example, if the debtor has a \$400 interest in a car worth \$2,000, the car should be exempt since the debtor's interest is under \$500; but, under current law, the \$2,000 total value would make it nonexempt. If the car is sold, theoretically \$1,600 would go to pay off encumbrances, and the \$400 remaining would go to the debtor. Consequently, the debtor is forced by the creditor and the law to sell his car (no doubt with some losses in the transaction) and put his \$400 in a \$1,000 (or cheaper) car. (The Commission should also consider the adequacy of the \$500 amount which dates

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from 1972; before that, it was \$350.) If the policy behind the \$1,000 limit is to prevent a situation where the debtor is burdened with large or long-term car payments, it fails to achieve its goal. If the debtor ever increases his interest in the car over the \$500 level, then it may be sold regardless of its total value. The only situation where the \$1,000 limit seems to function in the best interest of either party is where the car is depreciating faster than the debtor's interest in it increases. In such cases, the creditor has an interest in preventing the debtor from pouring his money down a rathole. But the staff is not convinced that this situation occurs often enough or that, when it does, the benefit from forcing sale is sufficient to justify the \$1,000 limit.

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§ 705.250. Housetrailer, mobilehome, vessel

705.250. (a) One housetrailer, mobilehome, or vessel as defined in Section 9840 of the Vehicle Code, in which the judgment debtor or his family actually resides, with a value not exceeding fifteen thousand dollars (\$15,000) over all liens and encumbrances on such housetrailer, mobilehome, or vessel, is exempt if neither the judgment debtor nor the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

(b) If such housetrailer, mobilehome, or vessel is sold, the proceeds of sale, after satisfaction of all liens and encumbrances on such housetrailer, mobilehome, or vessel, are exempt to a maximum amount of fifteen thousand dollars (\$15,000) for a period of three months after sale.

Comment. Subdivision (a) of Section 705.250 continues the substance of former Section 690.3 and adds an exemption for a vessel in which the judgment debtor or the debtor's family actually resides. Subdivision (b) makes applicable to such housetrailer, mobilehome, and vessels a provision protecting proceeds of sale formerly found only in the motor vehicle exemption (former Section 690.2) and the homestead exemption (Civil Code §§ 1256, 1257).

Note. The term "housetrailer" is apparently nowhere defined; "mobilehome" is defined in Civil Code Section 1797.1 and Health and Safety Code

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Sections 18008, 18817, and 18211. Since these sections define the term differently, the staff thinks that it is best not to refer to any particular definition. The cases do not indicate that there has been any difficulty arising from the lack of definition of these terms; they seem to be general enough and commonly understood to achieve their purpose. The terms of the Vehicle Code could be used in place of "housetrailer" and "mobilehome"; but then we would have to use terms such as "house car," "trailer coach," and "camp trailer" which seem somewhat artificial.

405-331

§ 705.260. Works of art

705.260. Works of art of or by the judgment debtor or his [immediate] family are exempt. However, if the debtor or family artist sells his works of art as his primary occupation, only works of art which portray the family are exempt.

Comment. The first sentence of Section 705.260 continues the substance of the last sentence of former Section 690.1. The last sentence of Section 705.260 makes clear that, if the business of the judgment debtor or family artist is the sale of his artwork, the exemption applies only when the work of art portrays someone in the family. A work of art may also be exempt under Section 705.620 (household goods).

Note. This last sentence of Section 705.260 is derived from Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer 155, 170-171 (1972).

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§ 705.270. Prosthetic and orthopedic appliances

705.270. All prosthetic and orthopedic appliances personally used by the judgment debtor are exempt without making a claim of exemption.

Comment. Section 705.270 is similar to former Section 690.5 except that under Section 705.270 no claim of exemption need be made.

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§ 705.280. Pews

705.280. Pews in churches or in meetinghouses used for religious purposes which are owned, claimed, or held by the judgment debtor in accordance with the rules and regulations of such churches and meetinghouses are exempt without making a claim of exemption.

Comment. Section 705.280 is nearly identical to former Section 690.25.

Note. The staff thinks that this exemption is archaic, but it has been retained at this point because it does not seem to be doing much harm.

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§ 705.290. Cemeteries, mausoleums, columbariums

705.290. (a) Any interest of an individual judgment debtor in one of the following is exempt:

(1) A lot not exceeding one-quarter of an acre in size in a burial park and all appropriate improvements thereon including railings, fences, gravestones, and monuments.

(2) A mausoleum or one or more crypts in a mausoleum and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(3) A columbarium or niches in a columbarium, urns, and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(b) The part of any public or private cemetery actually containing human remains and all appropriate improvements thereon including railings, fences, gravestones, monuments, mausoleums, and columbariums are exempt without making a claim.

(c) Where a religious or benevolent association or corporation is a debtor, in addition to the exemption provided by subdivision (b), unused cemetery land not exceeding five acres in size is exempt.

(d) Except as provided in subdivision (c), land held for the purpose of sale or disposition as burial lots or otherwise is not exempt under subdivision (a) or (b).

(e) Money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is exempt if used or held for use for the purposes described in Section 7925 of the Health and Safety Code.

(f) Property dedicated as a cemetery by a cemetery authority is exempt without making a claim on a debt due from an individual owner of an interment plot.

(g) For the purposes of this section, the definitions provided in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code apply.

Comment. Section 705.290 is based on former Section 690.24 and has been phrased in terms of the definitions provided by Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code. Subdivision (a) makes clear that cemeteries composed of mausoleums and columbariums are exempt to the same extent as burial parks. Subdivision (b) is based on Peebler v. Danziger, 104 Cal. App.2d 491, 231 P.2d 895 (1951), which held that property occupied by graves of human beings cannot be sold under execution.

Note. Relevant definitions from the Health and Safety Code include the following:

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division VIII of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7007. Except in Part 5 of Division VIII of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

§ 705.300. Vacation credits

705.300. Vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any statute providing for the accumulation of vacation credits applicable to such employee are exempt without making a claim of exemption.

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Comment. Section 705.300 continues the substance of a portion of former Section 690.18(b).

Note. Should this apply only to public employees?

405-337

§ 705.310. Escrow funds

705.310. Escrow funds and trust funds are exempt without making a claim in any claim against a licensed escrow agent or any other person acting as escrow agent or against a trustee.

Comment. Section 705.310 continues the substance of a former part of Financial Code Section 17410. However, Section 705.310 generalizes the exemption to cover all escrow or trust funds whereas the exemption formerly contained in Financial Code Section 17410 did not apply to banks, trust companies, building and loan or savings and loan associations, insurance companies, California attorneys not actively engaged in conducting an escrow agency, and persons engaged in title insurance or real estate business. Fin. Code § 17006.

405-338

§ 705.320. Property held in trust for wages

705.320. Money and other property required to be held in trust by an employer for the payment of wages to employees are exempt without making a claim except where the money or other property is claimed by the employees of the employer.

Comment. Section 705.320 is based on former portions of Labor Code Sections 270.5 (property held in trust by logging employer) and 270.6 (property held in trust by employer of door-to-door or telephone solicitors). Section 705.320 extends the exemption of former law to any situation where an employer is similarly required to hold property in trust for the payment of employees.

405-339

§ 705.330. Employee's bond

705.330. An employee's bond given pursuant to Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of Division 2 of the Labor Code is exempt without making a claim except on claims by the employer, the employee or applicant, their successors or assigns.

Comment. Section 705.330 continues the substance of a former portion of Labor Code Section 404.

405-340

§ 705.340. Hospital endowment funds

705.340. Property granted to a trustee to endow a hospital pursuant to Division 23.5 (commencing with Section 32500) of the Health and Safety Code is exempt without making a claim after the grant is filed pursuant to Section 32502 of the Health and Safety Code.

Comment. Section 705.340 continues the substance of former Section 690.20 and of a former portion of Health and Safety Code Section 32508.

405-341

§ 705.350. Educational endowment funds

705.350. Property granted to a trustee for educational purposes pursuant to Article 1 (commencing with Section 31051) of Chapter 2 of Division 22 of Part 4 of the Education Code is exempt without making a claim if the action under which the writ is issued is not commenced within two years after the filing of the grant pursuant to Section 31065 of the Education Code. If the action is commenced within two years after the filing of the grant, such property is exempt without making a claim if

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there is other property of the grantor subject to execution and sufficient to satisfy the judgment.

Comment. Section 705.350 is substantively the same as the first two sentences of former Section 690.28 and of former Education Code Section 31067. The last sentences of former Section 690.28 and of former Education Code Section 31067 providing that mechanics' and laborers' liens are not affected are superseded by Section 705.150.

405-342

§ 705.360. Merchandise on vessel

705.360. In proceedings pursuant to Article 3 (commencing with Section 490) of Chapter 2 of Division 3 of the Harbors and Navigation Code, merchandise on board a vessel and trunks and other property of passengers and of persons employed on board a vessel are exempt without making a claim.

Comment. Section 705.360 is based on a portion of Harbors and Navigation Code Section 495.4.

Note. Section 495.4 of the Harbors and Navigation Code provides:

495.4. The sheriff, marshal, or constable to whom the writ is directed and delivered shall execute it without delay, and shall attach and keep in his custody the vessel, named therein, with its tackle, appurtenances, appliances, furnishings, and furniture, until discharged in due course of law; but the sheriff, marshal, or constable is not authorized by any such writ to interfere with the discharge of any merchandise on board of such vessel or with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

405-343

§ 705.370. Partnership property

705.370. The right of a partner in specific partnership property is exempt except on a claim against the partnership.

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Comment. Section 705.370 continues the substance of a former portion of subdivision (2)(c) of Section 15025 of the Corporations Code.

405-344

§ 705.380. Local public entity

705.380. Real and personal property of a local public entity as defined in Government Code Section 900.4 acquired for, held for, or devoted to a public use is exempt.

Comment. Section 705.380 provides a general exemption for all property of a local public entity which is acquired for, held for, or devoted to a public use. See Sections 705.020(d) (state property not subject to execution), 705.020(e) (property of local public entity not subject to execution on tort claim). Section 705.380 is derived from former Section 690.22 but, unlike the former section, does not list specific examples of exempt property such as courthouses, jails, fire stations, public office buildings, armories, cemeteries, parks, furniture, books, papers, automotive and truck equipment, and the like. However, all such real or personal property is exempt under Section 705.380 if it is devoted to a public use. Section 705.380 also replaces former Sections 690.26 and 690.29, Health and Safety Code Sections 33124 and 34217, and Water Code Section 8537. Public cemeteries or part thereof are also exempt under Section 705.290. Note that, under Section 705.380, all property devoted to a public use of a housing authority is exempt whereas, under former Section 690.27 and Health and Safety Code Section 34217, only the real property of a housing authority was exempt. See Maurice L. Bein, Inc. v. Housing Authority, 157 Cal. App.2d 670, 321 P.2d 753 (1958).

Note. With the exception of the addition of an exemption for personal property of a housing authority, this section merely attempts to simplify the existing law while retaining its substance. Most of the language of Section 690.22 derives from 1872.

405-345

§ 705.390. Funds of prison inmate

705.390. The funds of a judgment debtor who is an inmate in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him or to his credit in an inmate's trust account or similar account by the state, county, city, or any agency thereof, are exempt to the extent that the inmate's funds exempt under Section 705.230 are less than [two] thousand dollars (\$[2],000).

Comment. Section 705.390 provides an exemption for funds of a prisoner held by authorities of a correctional facility equal to the amount that the inmate debtor's funds exempt under Section 705.230 (accounts in banks, savings and loan associations, and credit unions) are less than \$2,000. Former Section 690.21 provided that \$40 of an inmate's trust account was exempt without filing a claim for exemption.

Note. Apparently under existing law, if an inmate has \$500 in a prison account, he will lose \$460 of it whereas if he has \$500 in a savings and loan account, he will lose none of it. The proposed Sections 705.230 and 705.390 eliminate this inequity. In effect, the prison account is treated as if it were a bank account.

405-346

§ 705.400. Aid

705.400. Aid given under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to a judgment debtor or for his benefit prior to payment is exempt without making a claim. After payment, such aid is exempt.

Comment. Section 705.400 is based on former Section 690.19. However, Section 705.400 makes clear that all aid given under Division 9 of the Welfare and Institutions Code is exempt whereas former Section 690.19 was unclear. Section 705.400 does not continue the second sentence of former

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Section 690.19 which provided that, as against the claim of the county, the property of a debtor who had received "support from public moneys" is exempt only to the extent allowed by the limited exemptions provided by Welfare and Institutions Code Section 17409. This provision of former Section 690.19 denied recipients of county aid the exemptions available to other judgment debtors and, therefore, is probably unconstitutional under the equal protection clause. Cf. James v. Strange, 407 U.S. 128 (1972) (Kansas statute imposing liability on indigent defendant for costs of counsel provided for him and denying exemptions available to other judgment debtors held unconstitutional). See Welf. & Inst. Code § 10052 (defining "aid").

Note. Welfare and Institutions Code Section 17409 is in Appendix II. Section 690.19 refers to "all aid given under a public assistance program." The staff is unable to discern whether these terms are used generally or in the sense they are used in the Welfare and Institutions Code. Apparently, the phrase "all aid given under a public assistance program" was taken directly from Welfare and Institutions Code Section 11002 on the recommendation of the State Bar in 1967 (the revision was enacted in 1970). (Section 11002 is in Appendix II.) However, the terms "aid" and "public assistance program" are defined for the purposes of Section 11002 as follows:

11052. "Aid" means financial assistance provided to or in behalf of needy persons under the terms of this division, including direct money payments, vendor payments and medical care.

10061. "Public assistance" and "public assistance programs" refer to those public social services programs provided for in Part 3 of this division.

Hence, "aid" covers all money payments and the like in Division 9 whereas "public assistance program" refers only to Part 3. If "public assistance program" is limited to its technical meaning, the following forms of aid provided by Part 3 of Division 9 are exempt: AFDC, Old Age Security, Aid to the Blind, Aid to Needy Disabled, nonmedical care facilities and supportive home care services, Medi-Cal benefits, supplemental food programs, and several others. However, Part 4 programs, including adoption and institutions for children and aged, Part 5 programs, including county aid, and Part 6 programs, including emergency programs, miscellaneous programs for the blind, children, and aging, and food stamps would not be exempt. The staff thinks that all aid should be exempt.

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§ 705.410. Compensation and proceeds from public entity for dwelling

705.410. For a period of six months from the date of receipt, compensation received from a public entity which acquires for a public use

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a dwelling actually owned and occupied by the debtor and the proceeds received from a public entity pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code are exempt in the amount over all liens and encumbrances provided by Section 1260 of the Civil Code.

Comment. Section 705.410 continues the substance of former Section 690.8 (Cal. Stats. 1972, Ch. 822, § 1) and former Section 690.8 (Cal. Stats. 1972, Ch. 861, § 2).

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§ 705.420. Disability or health insurance

705.420. (a) If the annual premiums paid for disability or health insurance do not exceed five hundred dollars (\$500), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt.

(b) If the annual premiums paid for any disability or health insurance exceed five hundred dollars (\$500), moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Section 705.420 continues the substance of former Section 690.11.

405-349

§ 705.430. Life insurance

705.430. (a) Except as provided in subdivision (b), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of

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any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

(b) Where there are multiple beneficiaries claiming an interest in such moneys, benefits, privileges, or immunities, the exemption allowed to each beneficiary is the amount of the exemption provided in subdivision (a) which is proportional to his interest in the total proceeds of the policy.

(c) In addition to the exemption provided by subdivision (a), all moneys, benefits, privileges, and immunities belonging to or inuring to the benefit of the insured's spouse or minor children growing out of any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Subdivisions (a) and (c) of Section 705.430 continue the substance of former Section 690.9. Subdivision (b) codifies the holding in Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961).

Note. Should the amount of this exemption be higher? The \$500 amount in subdivision (a) is the same as it was in 1872. In 1947, it was proposed to raise this to \$1,000, but instead the exemption for the debtor's spouse and children in subdivision (c) was enacted.

405-350

§ 705.440. Group life insurance

705.440. Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance issued pursuant to

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Chapter 2 (commencing with Section 10200) of Part 2 of Division 2 of the Insurance Code and the proceeds thereof before payment are exempt without making a claim. After payment to the insured employee or the beneficiary, the proceeds of such insurance policy are exempt.

Comment. Section 705.440 is substantively similar to former Section 690.10. However, under Section 705.440, the judgment debtor need not make a claim for the exemption where the proceeds of the policy are in the hands of the insurer.

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§ 705.450. Public pension, annuity, retirement, disability, or death benefits

705.450. (a) Money held, controlled, or in process of distribution by the state, any county, city and county, city, or other political subdivision of the state, or by any public trust, public corporation, or public board derived from the contributions by such entity or by its officers or employees for retirement or pension purposes or the payment of disability, death, or other benefits, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, county, city and county, city, or other political subdivision of the state, or any public trust, public corporation or public board for retirement, annuity, or pension purposes or payment of disability or death benefits are exempt without making a claim.

(b) Money received by any person [a resident of the state] as a pension, as an annuity, retirement, disability, death, or other benefit, or as a return of contributions, and interest thereon, from the United States, the state, any county, city and county, city, or other political subdivision of the state, from any public trust, public corporation, or public board, or

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from any retirement, disability, or annuity system established by any such entity pursuant to statute, whether such money is in the actual possession of the debtor or deposited by him, is exempt.

Comment. Section 705.450 continues the substance of subdivisions (a) and (b) of former Section 690.18. The exemption for vacation credits provided in former Section 690.18(b) is continued in Section 705.300. The exemption of benefits under the Unemployment Insurance Code provided in former Section 690.18(b) is continued in Section 705.500(b).

Note. Subdivision (a) makes the following unnecessary: parts of Educ. Code § 13808; Govt. Code §§ 9359.3, 21201, 31452, 31913, 32210; Pub. Util. Code §§ 12337, 25337, 28896, 50146, 95836, 98196 and all of Water Code § 22142. For some reason, public boards are left out of the list in the last part of Section 690.18(b); they have been included here (subdivision (a)).

405-352

§ 705.460. Retirement system property, funds, contributions

705.460. The property of a retirement system as defined in Section 28002 of the Corporations Code, the portion of wages or salary of an employee deducted or to be deducted, the right of a participant or beneficiary to a benefit thereunder, and all his rights in the funds of the system are exempt without making a claim.

Comment. Section 705.450 continues the substance of a former portion of Corporations Code Section 28005 but makes clear that a claim of exemption need not be made.

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§ 705.470. Payment by pension or retirement plan

705.470. All periodic payments payable by a pension or retirement plan that are not otherwise exempt by law are exempt without making a claim in the amount that is exempted by Section 711.050.

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Comment. Section 705.460 continues the substance of subdivision (a) of former Section 690.23. Subdivision (b) of former Section 690.23 is not continued here. But see Section 705.130 (exemptions provided are cumulative).

Note. Section 690.23 is part of AB 101, the wage garnishment recommendation. A much more limited exemption is now provided by subdivision (c) of Section 690.18.

405-354

§ 705.480. Workmen's compensation

705.480. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, a claim for workmen's compensation or compensation awarded or adjudged is exempt without filing a claim and, after payment, is exempt.

Comment. Section 705.480 continues the substance of former Section 690.15.

405-355

§ 705.490. Unemployment compensation

705.490. Prior to payment, unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code, unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code, extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code, federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code, incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual

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under a plan or system established by an employer which makes provision for his employees generally or for a class or group of his employees for the purpose of supplementing unemployment compensation benefits are exempt without making a claim. After payment, such benefits are exempt.

Comment. Section 705.490 continues the substance of former Section 690.175.

405-946

§ 705.500. Unemployment insurance

705.500. (a) Contributions by workers to the Unemployment Compensation Disability Fund and by employers to the Unemployment Fund are exempt without making a claim.

(b) Money held, controlled, or in the process of distribution by employers for payment of benefits to, or reimbursement of benefits paid to, employees under the provisions of the Unemployment Insurance Code is exempt without making a claim.

Comment. Subdivision (a) of Section 705.500 continues the substance of former Section 690.16 and a former portion of Unemployment Insurance Code Section 988. Subdivision (b) continues the substance of a part of former Section 690.18(b).

405-947

§ 705.510. Fraternal organization funds for sick or unemployment benefits

705.510. Funds belonging to a fraternal organization which are used exclusively in the payment of sick or unemployment benefits to bona fide members of the organization are exempt to the maximum amount of five hundred dollars (\$500) [on claims against the organization].

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Comment. Section 705.500 is substantively the same as former Section 690.13.

Note. "Fraternal organization" is apparently not defined. This exemption does not seem to be very significant since \$500 would not go very far if more than one or two members of the organization were either sick or unemployed.

405-948

§ 705.520. Fraternal benefit society aid

705.520. Money or other aid due from any fraternal benefit society as defined by Section 10990 of the Insurance Code, before being paid or rendered, is exempt without making a claim. Such money or other aid, after being paid or rendered, is exempt.

Comment. Section 705.520 is substantively similar to former Section 690.14 and former Insurance Code Section 11045. However, Section 705.510 makes clear that the exemption need not be claimed before the money or other aid is paid or rendered.

Note. Insurance Code Section 10990 provides:

10990. Any incorporated society, order or supreme lodge, without capital stock, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

When used in this chapter, the word "society," unless otherwise indicated, shall mean fraternal benefit society.

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§ 705.530. Segregated benefit funds

705.530. Segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code are ex-

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empt on claims against the holder of the certificate of exemption except claims for benefits.

Comment. Section 705.530 continues the substance of former Section 690.12.

Note. This section concerns certain life insurers.

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Article 3. Exemptions

§ 705.610. Selection of property exempt

705.610. (a) If the judgment debtor is present when levy is made, he may exercise a right of selection of exemptions provided by this article. The levying officer shall inform the judgment debtor [in writing], if he is present, that he has the right to select exemptions provided by this article, and the judgment debtor shall make his selection. Any selection made by the judgment debtor or by the levying officer in his presence is conclusive upon the judgment debtor but may be contested by the judgment creditor as provided by Section 705.050.

(b) If the judgment debtor is not present when levy is made or if he does not exercise his right of selection, the property described as exempt by this article shall be treated as property described as exempt in Article 2 (commencing with Section 705.210).

Comment. Section 705.610 provides an opportunity for the debtor to select which of his property he wishes to claim as exempt subject, of course, to the limitations of value and type of property as provided in Sections 705.620 (household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel) and 705.630 (tools, implements, instruments, uniforms, books, equipment, vehicle, and vessel used in trade, business,

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or profession). The debtor is not required to select his property; he may leave this task to the levying officer. But, if he is present or if he selects the exemptions himself, he may not later claim an exemption for property then levied upon. Since estimates of value and categorizations of property may differ, the judgment creditor may contest any selections made by the judgment debtor as provided in Section 705.050.

Note. This procedure is modeled roughly on a selection procedure provided by Hawaii and Minnesota.

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§ 705.620. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel

705.620. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel, personally used or procured for use by the judgment debtor and members of his household at his principal place of residence, to a maximum aggregate cash value of [] dollars (\$) over all liens and encumbrances on such property at the time of levy are exempt.

Comment. Section 705.620 provides for exemptions similar to those provided by former Section 690.1. However, items such as a piano, radio, television receiver, shotgun, and rifle are included in the term "personal effects" instead of being listed. Moreover, in place of requiring the judgment debtor to show that items of property are "necessary" as provided by former Section 690.1, Section 705.620 substitutes a limit on the total value of the exemptions and allows the judgment debtor to select the items he wants. See Sections 705.610 (selection procedure) and 705.050 (contest of selection). Compare former Section 690.4 (now Section 705.630).

Note. This form of the household goods exemption is intended to avoid the result in Independence Bank v. Heller, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969) (see discussion in Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer 155 (1972)).

405-952

§ 705.630. Tools, etc., used in trade, business, or profession

705.630. Tools, implements, instruments, uniforms, books, equipment, one vehicle, one vessel, and other personal property reasonably necessary to and actually used by the debtor in the exercise of the trade, business, or profession by which the debtor earns his livelihood are exempt to the maximum aggregate cash value of two thousand five hundred dollars (\$2,500) over all liens and encumbrances on such items at the time of levy.

Comment. Section 705.630 continues the substance of former Section 690.4. However, a new procedure for selecting such exemptions is provided. See Section 705.610.

Note. 'Farming' has been left out of this section: presumably, it is included in trade or business. Section 705.630 deals with personal property generally. We did not continue Section 690.17 which also exempts certain building materials in the amount of \$1,000.

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Article 4. Homesteads

§ 705.710. Homesteads

705.710. The homestead is exempt as provided in Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

Comment. Section 705.710 makes clear that the homestead exemption is claimed as provided in Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code, not as provided by Sections 705.030-705.050.

Note. The staff intends to study the homestead exemption procedures to determine if they can be improved.

APPENDIX II

CONFORMING CHANGES

Civil Code § 765 (amended)

Sec. . Section 765 of the Civil Code is amended to read:

765. _____ Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, ~~but are not liable as such to sale on execution.~~

Comment. The provision that estates at will are "not liable as such to sale on execution" is superseded by subdivision (c) of Section 705.020 of the Code of Civil Procedure.

Corporations Code § 15025 (amended)

Sec. . Section 15025 of the Corporations Code is amended to read:

15025.

(1) _____ A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) _____ The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) ~~A partner's right in specific partnership property is not subject to attachment, or execution, except on a claim against the partnership.~~ When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin, and is not community property.

Comment. The exemption from attachment and execution of a partner's right in specific partnership property, except on claims against the partnership, has been superseded by Code of Civil Procedure Section 705.370.

Corporations Code § 28005 (amended)

Sec. . Section 28005 of the Corporations Code is amended to read:

^{28005.}
~~The property of a retirement system, the portion of wages or salary of an employee deducted or to be deducted, the right of a participant or beneficiary to a benefit thereunder, and all his rights in the funds of the system, shall be exempt from taxation, attachment, garnishment, execution, and from the operation of any law relating to bankruptcy or insolvency.~~

Comment. The exemption from attachment, garnishment, and execution provided by Section 28005 has been superseded by Code of Civil Procedure Section 750.460. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This section is from the Retirement Systems Disclosure Law (Section 28000 et seq.).

Education Code § 13808 (amended)

Sec. . Section 13808 of the Education Code is amended to read:

^{13808.}
~~The right of a person to an annuity, a retirement salary, or a retirement allowance, to the return of contributions, the annuity, retirement salary, or retirement allowance itself, a optional benefit, any other right or benefit accrued or accruing to any person under this chapter, and the moneys in the fund created under this chapter ~~are exempt from attachment, garnishment, execution, and from the operation of any law relating to bankruptcy or insolvency~~ are unassignable except as specifically provided in the chapter.~~

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 13808 has been superseded by Code of Civil Procedure Section 705.450. See Code Civ. Proc. § 705.440.

Note. This is from the State Teachers' Retirement Law (Section 13801 et seq.).

Education Code § 31067 (repealed)

Sec. . Section 31067 of the Education Code is repealed.

~~31067.~~

~~The property conveyed by the grant shall not, after a lapse of two years from the date of the filing for record of the grant, be subject to forced sale, under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution is issued, or the proceedings under which the sale is ordered, has been commenced within two years after the grant has been filed for record. No property shall be subject to execution or forced sale under any judgment obtained in any proceedings instituted within two years, if there is other property of the grantor, subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section contained shall be construed to affect mechanics' or laborers' liens.~~

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Comment. Section 31067 has been superseded by Code of Civil Procedure Sections 705.150 and 705.350. It relates to private grants for educational institutions, museums, art galleries, and parks.

Financial Code § 15406 (repealed)

Sec. . Section 15406 of the Financial Code is repealed.

~~15406. The shares and certificates for funds received of members of any credit union and all the accumulation on such shares and certificates are exempt from sale on execution and proceedings supplementary thereto to the amount of one thousand five hundred dollars (\$1,500). The procedure set forth in Section 690.50 of the Code of Civil Procedure shall be followed in claiming the exemption from execution pursuant to this section.~~

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Comment. Section 15406 is superseded by Section 705.230 of the Code of Civil Procedure.

Government Code § 31452 (amended)

Sec. . Section 31452 of the Government Code is amended to read:

31452.

The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district, and ~~from any law relating to bankruptcy or insolvency. They are not subject to execution, garnishment, attachment, or any other process of court whatsoever, and~~ are unassignable except as specifically provided in this chapter.

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 31452 has been superseded by Code of Civil Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Employees' Retirement Law of 1937 (Section 31450 et seq.).

Government Code § 31913 (amended)

Sec. . Section 31913 of the Government Code is amended to read:

31913.

That portion of the wages of any peace officer deducted or to be deducted under this chapter, the right of a peace officer or other person to an annuity or pension, and all his rights in the fund are exempt from taxation ~~and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court.~~ An assignment of any right in or to the funds or to any pension or annuity is void.

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 31913 has been superseded by Code of Civil

Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Peace Officers' Retirement Law (Section 31900 et seq.).

Government Code § 32210 (amended)

Sec. . Section 32210 of the Government Code is amended to read:

32210.

The title to all property acquired pursuant to this chapter shall be taken in the name of the county. The title to any money which becomes due to any member shall not pass from the county or county fire protection district to him until he is entitled thereto under this chapter. That portion of the wages of any member deducted or to be deducted under this chapter, the right of a member or other person to an annuity or pension, and all of his rights in the fund are exempt from taxation ~~and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court.~~ An assignment of any right in or to the funds, or to any pension or annuity is void.

Comment. The exemption from execution, garnishment, attachment, or any other process provided by Section 32210 has been superseded by Code of Civil Procedure Section 705.450. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy is repealed as unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Note. This is from the County Fire Service Retirement Law (Section 32200 et seq.).

Health & Safety Code § 7925 (amended)

Sec. . Section 7925 of the Health and Safety Code is amended to read:

7925.

Money payable or to become payable as the purchase price or on account of the purchase price of unused lands, or lands from which all remains have been removed ~~is not subject to garnishment, attachment or execution, but~~ shall be used exclusively for any or all of the following purposes:

(a) Acquisition of lands and improvements for cemetery purposes.

(b) Disinterment, removal, and reinterment of bodies, pursuant to this chapter.

(c) Endowment care of graves, markers, and cemetery embellishments.

(d) The payment of expenses incidental to the disinterment, removal, and reinterment.

(e) Any other purposes consistent with the objects for which the cemetery authority owning the cemetery is created or organized.

Comment. The exemption from garnishment, attachment, or execution provided by Section 7925 has been superseded by Code of Civil Procedure Section 705.290.

Health & Safety Code § 8561 (amended)

Sec. . Section 8561 of the Health and Safety Code is amended to read:

8561.

All property dedicated pursuant to this chapter, including roads, alleys, and walks, is exempt from public improvement assessments, ~~and is not liable to be sold on execution or applied in payment of debts due from individual owners of interment plots.~~

Comment. The exemption from execution provided by Section 8561 has been superseded by Code of Civil Procedure Section 705.290. See also Code Civ. Proc. § 705.140.

Health & Safety Code § 32508 (amended)

Sec. . Section 32508 of the Health and Safety Code is amended to read:

32508.

No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect the conveyance or the title to the property conveyed, or the right to the possession, rents, issues, and profits thereof, unless it is commenced within two years after the date of filing the grant for record. Nor in any suit, action, or proceeding commenced by the trustee named in the grant, his successor, privy, or any person holding under him shall any defense be made involving the legality of the grant, or affecting the title to the property

thereby conveyed, the right to its possession, or the rents, issues, and profits thereof, unless the suit, action, or proceeding is commenced within two years after the grant. ~~After the expiration of the property shall be exempt from execution and forced sale.~~

Comment. The exemption from execution and forced sale of property granted pursuant to this division which was provided by Section 32506 has been superseded by Code of Civil Procedure Section 705.340. See also Code Civ. Proc. § 705.140.

Note. Section 32506 relates to grants to endow a hospital.

Health & Safety Code § 33124 (repealed)

Sec. . Section 33124 of the Health and Safety Code is repealed.

~~33124.~~

~~All property of an agency, including funds, owned or held by it for the purposes of this part shall be exempt from levy and sale by virtue of an execution or other judicial process. Execution or other judicial process shall not issue against such property of an agency nor shall any judgment against an agency be a charge or lien upon such property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of an agency or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an agency on its real property or securities.~~

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Comment. Section 33124 has been superseded by Code of Civil Procedure Sections 705.150 and 705.350. See also Code Civ. Proc. § 705.140.

Health & Safety Code § 34217 (repealed)

Sec. . Section 34217 of the Health and Safety Code is repealed.

~~34217.~~

~~Execution or other judicial process shall not issue against the real property of an authority nor shall any judgment against an authority be a charge or lien upon its real property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its real property or securities.~~

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Comment. Section 34217 has been superseded by Code of Civil Procedure Sections 705.150 and 705.330. See Code Civ. Proc. § 705.140.

Insurance Code § 10213 (amended)

Sec. . Section 10213 of the Insurance Code is amended to read:

10213.

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~~Except as provided by Sections 10263.5, 10263.6 and 10263.8, a policy of group life insurance or the proceeds thereof paid to the insured employee or the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary, shall not constitute a part of the estate of the employee for the payment of his debts.~~

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Comment. The exemption from legal or equitable process provided by Section 10213 has been superseded by Code of Civil Procedure Section 705.440. See also Code Civ. Proc. § 705.140.

Insurance Code § 10498.5 (amended)

Sec. . Section 10498.5 of the Insurance Code is amended to read:

10498.5.

If a holder of a certificate of exemption receives or maintains funds for any purpose other than administering and providing the benefits that make it subject to this article, it shall segregate and maintain separately all funds received by it for the purpose of administering and providing such benefits.

~~When so segregated and maintained separately such benefit funds shall not be liable to attachment, garnishment, execution, or other process by or on behalf of creditors against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim for benefits.~~

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Comment. The second paragraph of Section 10498.5, which provided an exemption from attachment, garnishment, execution, or other process, has been superseded by Code of Civil Procedure Section 705.530. See also Code Civ. Proc. § 705.140.

Insurance Code § 11045 (repealed)

Sec. . Section 11045 of the Insurance Code is repealed.

~~11045.~~

~~Money or other thing of value tendered by any stock society shall not be held, either before or after payment, to attachment, or to be applied by any creditor or creditor's process or by action of law to pay any liability of a member or any person entitled to such shares.~~

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Comment. Section 11045 has been superseded by Code of Civil Procedure Section 705.510. See Code Civ. Proc. § 705.140.

Labor Code § 270.5 (amended)

Sec. . Section 270.5 of the Labor Code is amended to read:

270.5.

No person, agent or officer thereof, or logging contractor, or sawmill operations contractor, engaged in the business of logging or operating a sawmill for converting logs into lumber, except in the case of logging or sawmill operations of persons having a free and unencumbered title to the fee of real property in this State, of a market value sufficient to pay the wages of every person employed in connection with such operations in any period for which a single payment of wages is made, shall fail or neglect, before commencing work in any period for which such single payment of wages is made, or for four calendar weeks, whichever is the longer, (a) to have on hand or on deposit with a bank or trust company, in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or (b) to deposit with the Labor Commissioner the bond of a surety company authorized to do business within the State, acceptable to him, conditioned upon the payment of all wages found by the Labor Commissioner to be due and unpaid in connection with such operations.

The cash and securities on deposit herebefore referred to shall not be commingled with other deposits, securities or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. ~~Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.~~

Any person, agent or officer thereof, or logging contractor, or sawmill operations contractor, who violates this section is guilty of a misdemeanor.

Comment. The exemption of moneys held in trust from garnishment, attachment, or execution provided by Section 270.5 has been superseded by Code of Civil Procedure Section 705.320.

Labor Code § 270.6 (amended)

Sec. . Section 270.6 of the Labor Code is amended to read:

270.6.

No person or agent or officer thereof, without a permanent and fixed place of business in this state who uses or employs any person in the door-to-door selling of any merchandise, or in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer.

(a) To have on hand or on deposit with a bank or trust company in the county where such business is conducted, or if there is no bank or trust company in the county then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or

(b) To deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to him, conditioned upon the payment of all wages found to be due and unpaid in connection with such operations under any provision of this code, or

(c) To deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent or officer subject to the provisions of this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with such operations for such period.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. ~~Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.~~

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

Comment. The exemption of moneys held in trust from garnishment, attachment, or execution provided by Section 270.6 has been superseded by Code of Civil Procedure Section 705.320.

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Labor Code § 404 (amended)

Sec. . Section 404 of the Labor Code is amended to read:

~~404.~~

~~Any money put up as a bond under sections 401, 402 and 403 shall be subject to garnishment, attachment or execution only by the employer, the employee or applicant, or the estate of either, and shall be returned to the employee or applicant together with accrued interest thereon, immediately upon the return of the money or property entrusted to the employee or applicant and upon the fulfillment of the agreement, subject only to the deduction necessary to balance accounts between the employer and employee or applicant.~~

Comment. The exemption of money put up as a bond from garnishment, attachment, or execution provided by Section 404 has been superseded by Code of Civil Procedure Section 705.330.

Labor Code § 4901 (repealed)

Sec. . Section 4901 of the Labor Code is repealed.

~~4901.~~

~~No claim for compensation nor compensation awarded, adjudged, or paid, is subject to be taken for the debts of the party entitled to such compensation except as hereinafter provided.~~

Comment. Section 4901 is repealed. Its substance is continued by Code of Civil Procedure Section 705.480. See Code Civ. Proc. § 705.140.

Public Utilities Code § 12337 (amended)

Sec. . Section 12337 of the Public Utilities Code is amended to read:

12337. All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, and is exempt from execution and attachment as provided in Section 690.18 of the Code of Civil Procedure.

Comment. The exemption from execution and attachment provided by Section 12337 has been superseded by Code of Civil Procedure Section 705.450.

Note. This is from the Municipal Utility District Act (Section 11501 et seq.).

Public Utilities Code § 25337 (amended)

Sec. . Section 25337 of the Public Utilities Code is amended to read:

25337.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, ~~and is exempt from execution and attachment pursuant to Section 690.18 of the Code of Civil Procedure.~~

Comment. The exemption from execution and attachment provided by Section 25337 has been superseded by Code of Civil Procedure Section 705.450.

Note. This is from the Transit District Law (Alameda and Contra Costa Counties--Section 24501 et seq.).

Public Utilities Code § 28896 (amended)

Sec. . Section 28896 of the Public Utilities Code is amended to read:

28896.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 23896 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the San Francisco Bay Area Rapid Transit District Act (Section 23500 et seq.).

Public Utilities Code § 50146 (amended)

Sec. . Section 50146 of the Public Utilities Code is amended to read:

50146.

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 50146 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Stockton Metropolitan Transit District Act of 1963 (Section 50000 et seq.).

Public Utilities Code § 95836 (amended)

Sec. . Section 95836 of the Public Utilities Code is amended to read:

95836.

All money received by any person as an annuity, pension, retirement allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 95836 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Santa Barbara Metropolitan Transit District Act of 1965 (Section 95000 et seq.).

Public Utilities Code § 98196 (amended)

Sec. . Section 98196 of the Public Utilities Code is amended to read:

98196.

All money received by any person as an annuity, pension, retirement, allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, ~~is exempt from execution, garnishment, or attachment and~~ is unassignable.

Comment. The exemption from execution, garnishment, or attachment provided by Section 98196 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Santa Cruz Metropolitan Transit District Act of 1967 (Section 98000 et seq.).

Unemployment Insurance Code § 988 (amended)

Sec. . Section 988 of the Unemployment Insurance Code is amended to read:

988.

Contributions by workers, payable as provided in this article, ~~shall be exempt from attachment and execution pursuant to Section 690.16 of the Code of Civil Procedure and from garnishment or any other remedy for the collections of debts, and in the event of the insolvency or bankruptcy of an employer shall not be considered any part of his assets and shall be paid to the director prior to the payment of any other claim against the employer.~~

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Comment. The exemption from attachment, execution, and any other remedy for the collection of debts provided by Section 988 has been superseded by Code of Civil Procedure Section 705.500. See also Code Civ. Proc. § 705.140. The exemption from bankruptcy of contributions under this article is repealed since it is unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Unemployment Insurance Code § 1342 (amended)

Sec. . Section 1342 of the Unemployment Insurance Code is amended to read:

1342. Any waiver by any person of any benefit or right under this code is invalid. Benefits under this code, incentive payments provided by Division 2 (commencing with Section 5000), and payments to an individual under a plan or system established by an employer which makes provisions for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits, are not subject to assignment, release, or commutation, ~~and are exempt from attachment and execution pursuant to Sections 690.175 and 690.18 of the Code of Civil Procedure.~~ Any agreement by any individual in the employ of any person or concern to pay all or any portion of the contributions required of his employer under this division is void.

Comment. The exemption from attachment and execution provided by Section 1342 has been superseded by Code of Civil Procedure Section 705.490.

Note. This section was enacted by Cal. Stats. 1973, Ch. 1206, § 58, and by Cal. Stats. 1973, Ch. 1207, § 58.

Water Code § 8537 (repealed)

Sec. . Section 8537 of the Water Code is repealed.

~~8537.~~

~~The property of the board and of the drainage district is exempt from execution or attachment.~~

Comment. Section 8537 has been superseded by Code of Civil Procedure Section 705.380.

Note. "Board" means Reclamation Board (Section 8521) and "drainage district" means Sacramento and San Joaquin Drainage District (Section 8522).

Water Code § 22142 (repealed)

Sec. . Section 22142 of the Water Code is repealed.

~~All money received by any person as annuity, pension, retirement allowance, disability payment or death benefit from the retirement or pension plan or system and all contributions and interest thereon returned to any member of such plan or system, whether in the actual possession of such person or deposited, loaned or invested by that person for execution, attachment or attachment.~~

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Comment. Section 22142 has been superseded by Code of Civil Procedure Section 705.450.

Note. This section is from the Irrigation District Law (Section 20500 et seq.).

Welfare & Institutions Code § 11002 (amended)

Sec. . Section 11002 of the Welfare and Institutions Code is amended to read:

11002.

All aid given under a public assistance program shall be absolutely inalienable by any assignment, sale, or otherwise, and in case of bankruptcy the aid shall not pass through any trustee or other person acting on behalf of creditors, and is exempt from execution and attachment pursuant to Section 690.19 of the Code of Civil Procedure.

Comment. The exemption from execution and attachment provided by Section 11002 has been superseded by Code of Civil Procedure Section 705.400. The exemption from bankruptcy proceedings has been repealed because it is unnecessary. See Bankruptcy Act § 6, 11 U.S.C. § 24 (1970).

Welfare & Institutions Code § 14115.5 (amended)

Sec. . Section 14115.5 of the Welfare and Institutions Code is amended to read:

14115.5.

Moneys payable or rights existing under this chapter shall be subject to any claim, lien or offset of the State of California, and any claim of the United States of America made pursuant to federal stat-

~~ute, but shall not otherwise be subject to execution, levy, attachment, garnishment, or other legal process, and no transfer or assignment, at law or in equity, of any right of a provider of health care to any payment shall be enforceable against the state, a fiscal intermediary or carrier.~~

No

Comment. The exemption from "execution, levy, attachment, garnishment, or other legal process" provided by Section 14115.5 has been superseded by Code of Civil Procedure Section 705.400. See also Code Civ. Proc. § 705.140.

Note. The chapter referred to in Section 14115.5 is Chapter 7 (Basic Health Care--Section 14000 at seq.) of Part 3 of Division 9.

Welfare & Institutions Code § 17409 (amended)

Sec. . Section 17409 of the Welfare and Institutions Code is amended to read:

17409.

There shall be exempt from the transfers and grants authorized by Section 17109 ~~and from attachment and execution on claims under Section 17408 against property acquired by persons for the support of whom public moneys have been expended~~ all of the following property:

- (a) Cash to the amount of fifty dollars (\$50).
 - (b) Personal effects and household furniture to the value of five hundred dollars (\$500).
 - (c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.
 - (d) Funds placed in trust for funeral or burial expenses to the extent that such funds do not exceed the sum of five hundred dollars (\$500).
 - (e) Insurance policies having an actual cash surrender value of not to exceed five hundred dollars (\$500).
 - (f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care granted after May 21, 1963.
- No county shall withhold emergency medical or hospital care from any person pending his giving security for reimbursement to the county for the care or hospitalization to be provided to him.

Comment. Section 17409 has been amended to delete the reference to execution on claims by the county under Section 17403 to recover money where a former aid recipient has later acquired property. The effect of this amendment is to make applicable to such actions the general exemptions from execution provided in Chapter 5 (commencing with Section 705.010) of the Code of Civil Procedure. See Code Civ. Proc. § 705.400 and Comment.