
Memorandum 94-51**Exemptions from Enforcement of Money Judgments:
Comments on Tentative Recommendation**

The tentative recommendation on *Exemptions from Enforcement of Money Judgments: Decennial Review* is part of the Debtor-Creditor Relations material distributed for comment after the September meeting. (A copy of the combined tentative recommendation was sent on October 5th.)

We have not received any comments on this material in response to distribution of the tentative recommendation. The staff believes there are interests who are likely to have concerns with the proposals, but they are not making their views known at this stage of the process. Once a bill is introduced, we expect that opposition will surface.

Since preparation of the tentative recommendation, legislation has been enacted to double the amount of the exemptions in the federal Bankruptcy Code. (For a copy of the federal revisions, see the letter from James P. McBride, Exhibit pp. 2-5.) This issue is addressed on page 5 of the tentative recommendation, with the then appropriate conclusion that it was premature to consider increasing the California bankruptcy exemptions in Code of Civil Procedure Section 703.140. The Commission will remember that the Legal Services Section of the State Bar earlier suggested that the California bankruptcy exemptions be doubled. (See Memorandum 94-17, Exhibit pp. 59-62, considered at May meeting.)

The Commission should consider whether to recommend conforming the amounts in Section 703.140 to the new federal bankruptcy amounts. The staff speculates that there are others who are likely to sponsor legislation to conform these exemptions, perhaps on an urgency basis. In this scenario, Commission involvement is unnecessary. However, there is no harm in including the necessary amendments in the Commission's recommendation and removing them later if other legislation is introduced. On the other hand, the Legislature may expect that the Commission's recommendation on exemption amounts would include such a proposal. In any event, if the Commission wants to include the bankruptcy amendments in its proposal, this could be done by amendment to

the bill after it is introduced. In other words, the Commission need not make a final decision on this matter at the November meeting.

The recommendation, however, does need to be revised either to include the alternative bankruptcy amendments in Section 703.140 or to revise the explanatory text on page five to state whether the Commission does not intend address the issue or is giving further consideration to the question.

Depending on the Commission's decision, the staff will prepare the necessary revisions of the explanatory text and any needed amendments. The recommendation would not be finally printed until sometime next year, so there is time to adjust the text. The amendments are straightforward. (A draft of the revised text and amendments to Section 703.140 is attached as Exhibit pp. 6-8.)

The staff recommends that the Commission approve this recommendation for introduction in the 1995 legislative session. The staff also suggests that the Commission seriously consider including the alternative bankruptcy provisions in the bill.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

Law Revision Commission

RECEIVED

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File: D-351

October 27, 1994

Mr. Stan Ulrich
California Law Revision Commission
4000 Middlefield Rd., Ste. D2
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RE: BANKRUPTCY CODE CHANGES

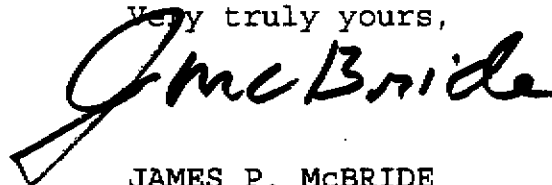
Dear Stan:

Enclosed please find the new version of § 522. I am told it was signed into law October 22, 1994.

These pages come from a booklet put together by the Southern California law firm Murphy, Weir & Butler. Their partner Penn Ayers Butler distributed it yesterday at a conference in San Francisco.

Thank you for describing the process by which the California Legislature may consider adopting the new exemption amounts.

Very truly yours,



JAMES P. McBRIDE

JPM/ld

Enclosures

11 USC § 521. Debtor's duties

The debtor shall —

- (1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;
- (2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate —
 - (A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;
 - (B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and
 - (C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title;
- (3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;
- (4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; and
- (5) appear at the hearing required under section 524(d) of this title.

11 USC § 522. Exemptions

(a) In this section —

- (1) "dependent" includes spouse, whether or not actually dependent; and
 - (2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.
- (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Rules Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is —

- (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,
 - (2) (A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and
(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.
- (c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except —

- (1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;
- (2) a debt secured by a lien that is —
 - (A) (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
 - (ii) not void under section 506(d) of this title; or
 - (B) a tax lien, notice of which is properly filed; or
- (3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution.
- (d) The following property may be exempted under subsection (b)(1) of this section:
 - (1) The debtor's aggregate interest, not to exceed \$ ~~7,500~~ 15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
 - (2) The debtor's interest, not to exceed \$ ~~1,200~~ 2,400 in value, in one motor vehicle.
 - (3) The debtor's interest, not to exceed \$ ~~300~~ 400 in value in any particular item or \$ ~~4,000~~ 8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
 - (4) The debtor's aggregate interest, not to exceed \$ ~~500~~ 1,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
 - (5) The debtor's aggregate interest in any property, not to exceed in value \$ ~~400~~ 800 plus up to \$ ~~3,750~~ 7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.
 - (6) The debtor's aggregate interest, not to exceed \$ ~~750~~ 1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.
 - (7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
 - (8) The debtor's aggregate interest, not to exceed in value \$ ~~4,000~~ 8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
 - (9) Professionally prescribed health aids for the debtor or a dependent of the debtor.
 - (10) The debtor's right to receive —
 - (A) a social security benefit, unemployment compensation, or a local public assistance benefit;
 - (B) a veterans' benefit;
 - (C) a disability, illness, or unemployment benefit;
 - (D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless —
 - (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
 - (ii) such payment is on account of age or length of service; and
 - (iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), ~~or 408, or 409~~ of the Internal Revenue Code of 1954 (~~36 U.S.C. 401(a), 403(a), 403(b), 408, or 409~~), 1936.
 - (11) The debtor's right to receive, or property that is traceable to —

- (A) an award under a crime victim's reparation law;
- (B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
- (C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
- (D) a payment, not to exceed \$ 7,500 15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or
- (E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.
- (f) (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is —
- (A) a judicial lien, or, other than a judicial lien that secures a debt —
- (i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and
- (ii) to the extent that such debt —
- (I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and
- (II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.
- (B) a nonpossessory, nonpurchase-money security interest in any —
- (A)(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;
- (B)(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
- (C)(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.
- (2) (A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of —
- (i) the lien,
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
- exceeds the value that the debtor's interest in the property would have in the absence of any liens.
- (B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.
- (C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.
- (3) In a case in which State law that is applicable to the debtor —

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property; the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a non-possessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if —

(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) The debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if —

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i) (1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except —

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

11 USC § 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt —

Staff Draft

Alternative Bankruptcy Exemptions Amendments

1. Explanatory Text Revision

The text on page 5 of the recommendation would be revised as follows:

The exemptions under the federal Bankruptcy Code were recently doubled in amount.¹ Although California has opted out of the federal exemption scheme,² the California alternative bankruptcy exemptions have paralleled the federal amounts.³ The amounts of these two exemption schemes should be the same. Accordingly, the Commission recommends that the alternative state bankruptcy exemptions be revised to conform to the federal Bankruptcy Code amounts.

1. 11 U.S.C. § 522, as amended by ____.

2. Section 703.130.

3. See Section 703.140.

2. Recommended Legislation Revision

The following amendment would be added to the recommendation to conform the state alternative bankruptcy exemptions to federal amounts:

Code Civ. Proc. § 703.140 (amended). Election of exemptions if bankruptcy petition is filed

SEC. _____. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption

provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed ~~seven~~ fifteen thousand five hundred dollars ~~(\$7,500)~~ (\$15,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed ~~one~~ two thousand ~~two~~ four hundred dollars ~~(\$1,200)~~ (\$2,400) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed ~~two~~ four hundred dollars ~~(\$200)~~ (\$400) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed ~~five hundred~~ one thousand dollars ~~(\$500)~~ (\$1,000) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value ~~four~~ eight hundred dollars ~~(\$400)~~ (\$800) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed ~~seven~~ one thousand five hundred ~~fifty~~ dollars ~~(\$750)~~ (\$1,500) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value ~~four~~ eight thousand dollars ~~(\$4,000)~~ (\$8,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), or 408, or 409 of the Internal Revenue Code of 1954 1986.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed ~~seven~~ fifteen thousand ~~five hundred~~ dollars ~~(\$7,500)~~ (\$15,000), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Comment. Section 703.140 is amended to conform to the amounts in the federal Bankruptcy Code and to correct references to sections in the Internal Revenue Code. See 11 U.S.C. § 522.