

Memorandum 2002-42

Exemptions from Enforcement of Money Judgments: Second Decennial Review (Draft Tentative Recommendation)

Attached to this memorandum is a staff draft of a tentative recommendation on *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, which implements the decisions made by the Commission at the June meeting. We plan to review the draft at the September meeting. If it is approved, the tentative recommendation will be circulated for comment, assuming any needed revisions can be implemented without further Commission review, with the goal of approving a final recommendation as a basis for proposed legislation in the 2003 legislative session.

Some issues are discussed in staff notes following the sections in the draft. Additional issues and other matters are discussed in this memorandum.

State Bar Insolvency Law Committee Proposal

After the June meeting, we were contacted by Robert G. Harris, representing the Insolvency Law Committee of the Business Law Section of the State Bar (SB-ILC). Mr. Harris forwarded a proposal that the SB-ILC has made to the bar hierarchy for legislation to enact an automatic cost-of-living adjustment (COLA) applicable to enforcement exemptions, as well as the bankruptcy-only exemptions in Code of Civil Procedure Section 703.140(b). (A copy of the SB-ILC proposal, as updated August 26, is set forth in Exhibit pp. 1-3.) Mr. Harris is planning on attending the September Commission meeting, and will be able to give the Commission an update on the status of the SB-ILC proposal.

The Commission will be interested in the language of the SB-ILC's proposed amendment (Exhibit p. 3), which would require the Commission to "publish" the adjusted exemption amounts on March 1 every triennium running from 2004. (The language of this proposal appears to be drawn from the federal bankruptcy statute, see 11 U.S.C. § 104(b).) It is still relatively early in the process, but the Commission should give some consideration to the SB-ILC proposal. We are not sure where the State Bar will go with it, nor do we know what form the

Commission's final recommendation may take, but it would be beneficial if the Commission and the State Bar could coordinate efforts.

If the Commission were proposing an automatic COLA provision for enforcement exemptions, the staff would suggest that the necessary findings be made by rules adopted by the Judicial Council, rather than the Commission. The Judicial Council has a well-established mechanism for adopting rules, unlike the Commission, and routinely makes changes in official forms used in enforcement of judgments proceedings. In an automatic COLA scheme, where the true amount of an exemption is different from the statutory provision, the best location for information on the applicable amount of the exemption would be in the Judicial Council form for making exemption claims. (See EJC-155.) While this would be true no matter who makes the necessary findings, the staff does not think the Commission needs to be involved in such a process, since the Judicial Council would need to revise the forms in any event.

Reconsideration of Appropriate CPI

In preparing the attached draft tentative recommendation, the staff became mildly concerned about selecting the most appropriate consumer price index. Should we use the California CPI, consistent with the 1995 we did in 1995 revisions and with many other California statutes, or the US CPI, consistent with the Bankruptcy Code and incorporated in Code of Civil Procedure Section 703.140(c) for the state bankruptcy-only exemptions? Less significant, but still an issue: should we use the latest annual average or the latest monthly figure?

The California "All Urban Consumers" index (where 1982-84=100) is significantly higher than the comparable US figure — respectively, 181.7 v. 177.1 (2001 annual average), or 185.9 v. 179.9 (June 2002). (See California Dept. of Industrial Relations, Div. of Labor Statistics, *Consumer Price Index — California* (7/19/02), at <http://www.dir.ca.gov/DLSR/statistics_research.html>.) This difference is significant because the base factor for the adjustment is 1995 where the index is 154, instead of 100 in 1982-84 — consequently the 4-6 point difference between these indexes represents at least a 15% differential. (Note, also, that the 1995 base for the US figure is 152.4 instead of 154.)

Furthermore, our original approach, as set out in Memorandum 2002-29, was to use the latest monthly California CPI figure, to help take account of the "law's delay." By this, we mean that any amount set in late 2002 will not take account of additional inflation occurring before the operative date of eventual legislation,

presumably January 1, 2004. Hence, we chose the most recent number, rather than the months' old 2001 annual average.

The effects of the choice of CPI are illustrated in the *COLA Calculator* set out at Exhibit page 4.

- *Chart A* shows the numbers used in the draft tentative recommendation, which were the figures before the Commission at the June meeting (with some rounding error corrections).
- *Chart B* shows the exemption amounts based on the 2001 annual average, which we believe to be the approach under Section 104 of the Bankruptcy Code; i.e., comparing annual averages every three years. The last column in *Chart B* shows the amounts by which the current monthly California CPI (June 2002) exceeds the 2001 annual average CPI.
- *Chart C* uses the national figures that would be used under the Bankruptcy Code (with a different figure for the 1995 base year). The last column in *Chart C* shows the amounts by which the California 2001 annual CPI exceeds the US figures.

Thus, there are two related issues that need to be resolved: (1) Should we use the latest *annual* average, and (2) should we use the US CPI instead of the California CPI?

Timing of Tentative Recommendation — Pending Bankruptcy Bill

Congress is expected to take up the pending bankruptcy reform bill (HR 333) in the coming weeks. This may be significant for our purposes because we do not know the final outcome of the reform bill. As currently drafted, HR 333 continues the opt-out rule, permitting states to set up the dual exemption system operating in California. And the federal triennial COLA would still be in place, so the underlying logic of a loose conformity with the federal COLA would still be valid. There are limitations in the bill on state homesteads in both amounts and residency requirements, but these don't concern us here. There are also some new details limiting the personal property wildcard exemption that harken back to the early "laundry list" days of exemption law. (See proposed amendment to 11 U.S.C. § 522(f)(4), listing "1 radio ...1 television ... 1 VCR ... 1 personal computer and related equipment," etc.) While we don't know what will be in the final bankruptcy reform bill, we do know that 66 law professors have written to complain about the inadequacy of the homestead exemption reform and that the legal literature and bankruptcy commission reports for years have argued most

strenuously for elimination of the state opt-out provision, in order to achieve some degree of uniformity in federal bankruptcy exemptions.

The staff is not in a position to predict the outcome, although it appears that the opt-out will remain, leaving California's dual bankruptcy exemption scheme in place. The question for the Commission, however, is whether we should delay distributing a tentative recommendation until HR 333 is signed into law. If any revisions prompted by the new federal law are technical, the staff can revise the tentative recommendation ministerially. If any substantive issues arise, then we would bring it back to the Commission at the next meeting or, if the Commission prefers, we would distribute a "discussion draft" instead of a tentative recommendation.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

To: Terry Miller, State Bar Office of Governmental Affairs
From: Chair of the Legislation Subcommittee of the Business Law Section Executive Committee

Date: August 26, 2002

Re: Proposed Amendment to C.C.P. §703.120 to Index Annual Increases to Exemptions

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: April 19, 2002

Approval Vote: For _____ Against: _____

Date of Approval by Section Standing Committee: January 10, 2002

Approval Vote: For 15 Against: 0

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DIGEST: The Insolvency Law Committee of the State Bar of California (the “Committee”) proposes an amendment to California Code of Civil Procedure section 703.120 to preserve in real dollars (1) the increase in personal exemption levels that was approved in July, 2001 through AB 1704, and (2) to extend indexing to the personal property exemptions available to judgment debtors and debtors in bankruptcy who rent and those who own homes. Current Federal law and at least one state have indexed increases in personal exemptions from judgment, which are also applied in personal bankruptcy filings, rather than choosing to enact increases every six to ten years.

PURPOSE: Existing State law is set forth in California Code of Civil Procedure sections 703.140(b) and 704.010 *et seq.* Under those sections judgment debtors and debtors in Federal bankruptcy cases are eligible to claim exemptions under California law either as either home owners or non-home owners. The exemptions contained in sections 703.140(b) and 704.010 *et seq.* have been increased in the past on an irregular basis, thereby leaving eligible debtors able to exempt less property from execution or administration in bankruptcy due to the effects of inflation between the times that bills are passed to increase the level of exemptions. The proposed amendment makes adjustments to the indicated exemptions automatic and tracks the adjustment language of 11 U.S.C. section 104, United States Bankruptcy Code. The amendment preserves increases from the newly approved statutory increases which have been set forth in order to account for inflation and increases in the cost of living in the State since the last amendment and ensures that a homeowner who seeks to protect the equity in his or her vehicle or tools of trade will not be unduly disadvantaged by the passage of time between legislative

reconsideration of the effect of inflation on exemption levels. The proposed automatic adjustment will lessen the burden on the legislature and staffers while maintaining a standard for relief that is not subject to political considerations and delay.

ILLUSTRATION 1: A person who is not a homeowner purchases a vehicle for \$10,000 today and finances 100% of the debt. That person makes his or her car payments every month for three years and reduces the debt to \$4,500. At that point, the vehicle is worth \$7,500 and has \$3,000 of equity. For unrelated reasons, the person in question files a Chapter 7 bankruptcy. Under the current law, the exemption available to that person in three years would still be \$2,775, though inflation would have continued at 4% *per annum*. The person in question would, by using his or her exemption for automobiles alone, be unable to retain the vehicle, and it could be sold by the trustee or, outside of bankruptcy, by a judgment creditor without paying the unprotected amount of over the exemption of \$225 under the current law. Indexing, as proposed in the suggested change to the law, would have resulted in an exemption that would have increased by the 4% per year inflation rate, amounting to an increase of \$346.50 over the three years. The increased exemption amount of \$3,121.50 permits the debtor to retain his or her vehicle without having to pay additional sums.

ILLUSTRATION 2: A person who is a homeowner purchases a vehicle for \$10,000 today and finances 100% of the debt. That person makes his or her car payments every month for three years and reduces the debt to \$4,500. At that point, the vehicle is worth \$7,500 and has \$3,000 of equity. For unrelated reasons, the person in question files a Chapter 7 bankruptcy. Under the current law, the exemption available to that person in three years would be \$1,900, though inflation would have continued at 4% *per annum*. The debtor would be unable to retain the vehicle without paying the unprotected amount over the exemption of \$1,100 under the current law. Indexing, as proposed in the suggested change to the law, would have resulted in an exemption that would have increased by the 4% per year inflation rate, amounting to an increase of \$237.25 over the three years. The increased exemption amount of \$2,137.25 permits the debtor to retain his or her vehicle by paying a smaller sum or to protect a similar amount of equity in a less valuable vehicle.

HISTORY: The Committee is unaware of previous bills proposing to index the exemptions available to judgment debtor and debtor in bankruptcy under California law. California Code of Civil Procedure section 703.120 requires that the California Law Revision Commission review the exempt amounts provided under the Code every ten years and recommend changes that appear proper. See 11 U.S.C. section 104. The last change to the amount of exemptions occurred in July, 2001 with the passage into law of AB 1704. This bill appears to represent the judgment of the Legislature as to the proper level for all exemptions in current real dollars but only covers exemptions for non-homeowners. The exemptions available under the Federal Bankruptcy Code, which are not available to persons filing in California, were indexed to inflation in 1994 for the specific purpose of maintaining the exemptions at a chosen level of real dollars relative to inflation. The proposed legislation does just that, leaving the larger policy question of changes to the exemption amounts in real dollars to the California Law Revision Commission.

PENDING LITIGATION: No pending litigation would be affected. The change would be prospective in nature only, for cases and claims of exemption made only after the effective date of the revised statute and, thereafter, to the date of each annual adjustment.

LIKELY SUPPORT & OPPOSITION: The interest groups, organizations, professional associations, government agencies, key law makers or individual attorneys likely to support this proposal are as follows: consumer groups and debtor's rights organizations. The interest groups, organizations, professional associations, government agencies, key law makers or individual attorneys likely to oppose this proposal are as follows: banks, private finance companies. Their reasons and the arguments that would be made as follows:

Consumer Groups and Debtor's Rights Organizations will argue that permitting a fresh start in bankruptcy is critical to debtors, especially if a new Federal bankruptcy law is about to be passed, and that it is up to the States to lead to way to offer something that provides fundamental fairness.

Banks and Private Finance Companies will argue that the new laws seek to create uniform national exemptions but, in support of their economic interests, will oppose the bill and seek to force every debtor to pay the most that he or she is able, if not more, in order to retain financed property of marginal value.

FISCAL IMPACT: None

GERMANENESS: The proposed amendment would alter the rights of judgment debtors and debtors in bankruptcy, allowing them to protect greater amounts of assets from their creditors. It is appropriate for the Committee to submit the proposal because the matter requires the special knowledge, training, experience and technical expertise of the lawyers of the Committee. The Committee is comprised of 25 lawyers practicing in the area of bankruptcy law.

Proposed Amendment: The Committee recommends that California Code of Civil Procedure section 703.120 be amended as follows:

(1) by adding the following paragraph after existing subsection (b):

(c) Automatic adjustment of dollar amounts.

(a)(1) On June 1, 2004, and at each 3-year interval ending on June 1 thereafter, each dollar amount in eff under section 703.140 and sections 704.010-704.210 of the California Code of Civil Procedure immediately before such June 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such June 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 2004, and at each 3-year interval ending on March 1 thereafter, the California Law Review Commission shall publish the dollar amounts that will become effective on such June 1 under section 703.140 and sections 704.010-704.210 of the California Code of Civil Procedure.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

COLA Calculator

A	Cal CPI All Urban 6/02	1995	Jun-02	Factor			
		154	185.9	1.21	Section	Description	Rounded
	§ 704.010	Motor vehicle	\$ 1,900	\$ 2,294	\$ 2,300		
	§ 704.030	Residential repair materials	\$ 2,000	\$ 2,414	\$ 2,425		
	§ 704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 6,036	\$ 6,025		
	§ 704.060	Tools of trade 1	\$ 5,000	\$ 6,036	\$ 6,025		
	§ 704.060	<i>Tools of trade 2*</i>	\$ 10,000	\$ 12,071	\$ 12,050	<i>double 1</i>	
	§ 704.060	Commercial vehicle 1	\$ 4,000	\$ 4,829	\$ 4,825		
	§ 704.060	<i>Commercial vehicle 2*</i>	\$ 8,000	\$ 9,657	\$ 9,650	<i>double 1</i>	
	§ 704.080	Social Security 1	\$ 2,000	\$ 2,414	\$ 2,425		
	§ 704.080	Social Security 2	\$ 3,000	\$ 3,621	\$ 3,625		
	§ 704.080	<i>Public benefits 1*</i>	\$ 1,000	\$ 1,207	\$ 1,200	<i>-half SS 1</i>	
	§ 704.080	<i>Public benefits 2*</i>	\$ 1,500	\$ 1,811	\$ 1,800	<i>-half SS 2</i>	
	§ 704.090	Inmate trust funds	\$ 1,000	\$ 1,207	\$ 1,200		
	§ 704.090	Inmate trust funds limit	\$ 300	\$ 362	\$ 350		
	§ 704.100	Life insurance loan value	\$ 8,000	\$ 9,657	\$ 9,650		

B	Cal CPI All Urban 2001	1995	2001	Factor				
		154	181.7	1.18	Section	Description	Rounded	Notes
	§ 704.010	Motor vehicle	\$ 1,900	\$ 2,242	\$ 2,250			\$ 50
	§ 704.030	Residential repair materials	\$ 2,000	\$ 2,360	\$ 2,350			\$ 75
	§ 704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 5,899	\$ 5,900			\$ 125
	§ 704.060	Tools of trade 1	\$ 5,000	\$ 5,899	\$ 5,900			\$ 125
	§ 704.060	<i>Tools of trade 2*</i>	\$ 10,000	\$ 11,799	\$ 11,800	<i>double 1</i>		\$ 250
	§ 704.060	Commercial vehicle 1	\$ 4,000	\$ 4,719	\$ 4,725			\$ 100
	§ 704.060	<i>Commercial vehicle 2*</i>	\$ 8,000	\$ 9,439	\$ 9,450	<i>double 1</i>		\$ 200
	§ 704.080	Social Security 1	\$ 2,000	\$ 2,360	\$ 2,350			\$ 75
	§ 704.080	Social Security 2	\$ 3,000	\$ 3,540	\$ 3,550			\$ 75
	§ 704.080	<i>Public benefits 1*</i>	\$ 1,000	\$ 1,180	\$ 1,175	<i>-half SS 1</i>		\$ 25
	§ 704.080	<i>Public benefits 2*</i>	\$ 1,500	\$ 1,770	\$ 1,775	<i>-half SS 2</i>		\$ 25
	§ 704.090	Inmate trust funds	\$ 1,000	\$ 1,180	\$ 1,175			\$ 25
	§ 704.090	Inmate trust funds limit	\$ 300	\$ 354	\$ 350			\$ -
	§ 704.100	Life insurance loan value	\$ 8,000	\$ 9,439	\$ 9,450			\$ 200

C	US CPI All Urban 2001	1995	2001	Factor				
		152.4	177.1	1.16	Section	Description	Rounded	Notes
	§ 704.010	Motor vehicle	\$ 1,900	\$ 2,208	\$ 2,200			\$ 50
	§ 704.030	Residential repair materials	\$ 2,000	\$ 2,324	\$ 2,325			\$ 25
	§ 704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 5,810	\$ 5,800			\$ 100
	§ 704.060	Tools of trade 1	\$ 5,000	\$ 5,810	\$ 5,800			\$ 100
	§ 704.060	<i>Tools of trade 2*</i>	\$ 10,000	\$ 11,621	\$ 11,600	<i>double 1</i>		\$ 200
	§ 704.060	Commercial vehicle 1	\$ 4,000	\$ 4,648	\$ 4,650			\$ 75
	§ 704.060	<i>Commercial vehicle 2*</i>	\$ 8,000	\$ 9,297	\$ 9,300	<i>double 1</i>		\$ 150
	§ 704.080	Social Security 1	\$ 2,000	\$ 2,324	\$ 2,325			\$ 25
	§ 704.080	Social Security 2	\$ 3,000	\$ 3,486	\$ 3,475			\$ 75
	§ 704.080	<i>Public benefits 1*</i>	\$ 1,000	\$ 1,162	\$ 1,150	<i>-half SS 1</i>		\$ 25
	§ 704.080	<i>Public benefits 2*</i>	\$ 1,500	\$ 1,743	\$ 1,750	<i>-half SS 2</i>		\$ 25
	§ 704.090	Inmate trust funds	\$ 1,000	\$ 1,162	\$ 1,150			\$ 25
	§ 704.090	Inmate trust funds limit	\$ 300	\$ 349	\$ 350			\$ -
	§ 704.100	Life insurance loan value	\$ 8,000	\$ 9,297	\$ 9,300			\$ 150

CALIFORNIA LAW REVISION COMMISSION

Staff Draft TENTATIVE RECOMMENDATION

Exemptions from Enforcement of Money Judgments: Second Decennial Review

September 2002

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 30, 2002.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Pursuant to its statutorily mandated decennial review of dollar amounts of exemptions from enforcement of judgments, the Commission recommends adjusting personal property monetary exemptions to account for cost-of-living increases since 1995. In addition, the Commission recommends implementation of a triennial exemption review, consistent with federal bankruptcy law, in place of the current decennial review.

This decennial review of exemptions has been conducted pursuant to Code of Civil Procedure Section 703.120(a).

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS: SECOND DE CENNIAL REVIEW

The Commission is charged with the responsibility of reviewing the dollar amount of debtors' exemptions under the Enforcement of Judgments Law¹ every 10 years and recommending any changes in amounts "that appear proper."² In this recommendation, the Commission proposes increasing exempt amounts by approximately 20% to adjust for changes in the cost of living since the last comprehensive review. The Commission also proposes substituting a triennial review duty for the existing decennial review, for consistency with the automatic adjustment of California's alternative bankruptcy exemptions.

Background

Exemptions are necessary to protect an amount of property sufficient to support the judgment debtor and dependent family and to facilitate the debtor's financial rehabilitation. In order to fulfill this purpose, exemption amounts need to be adjusted from time to time to take account of changes in the cost of living.

Existing law provides seven personal property exemptions that are subject to dollar limitations: motor vehicles,³ residential repair materials,⁴ jewelry, heirlooms, and works of art,⁵ tools of a trade, business, or profession,⁶ directly deposited Social Security and public benefit payments,⁷ inmate trust accounts,⁸ and life insurance and annuity loan value.⁹ Some of these exemptions are increased in the case of marital property or where both spouses are debtors,¹⁰ but the general rule is that married persons are not entitled to increased or doubled

1. Code Civ. Proc. § 680.010 *et seq.* The Enforcement of Judgments Law, operative July 1, 1983, was enacted on Commission recommendation. Part of that study involved modernizing the exemption statutes. See generally *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2075-106 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-109 (1982).

All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

2. See Section 703.120(a). The 10-year period runs from July 1, 1983, the operative date of the Enforcement of Judgments Law. This review was deferred until 1994 as authorized by Government Code Section 7550.5.

3. Section 704.010.

4. Section 704.030.

5. Section 704.040.

6. Section 704.060.

7. Section 704.080.

8. Section 704.090.

9. Section 704.100.

10. E.g., Sections 704.030(b) (residential repair materials where spouses live separate and apart), 704.060(a)(2)-(3), (d)(2) (tools of trade), 704.080(b)(2) (directly deposited Social Security or public benefit payments), 704.090(a) (inmate trust account).

exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property.¹¹

Exemptions based on need or on the type of property are immune from inflation and price changes.¹² Exemptions in fixed dollar amounts are subject to degradation as the purchasing power of a dollar shrinks. It is difficult to determine a dollar amount that is appropriate in all circumstances, but once a dollar amount has been set by the Legislature, it follows that exempt amounts should be revised from time to time to take account of inflation. Otherwise, the protection enacted at one point in time will erode significantly over the years.

Cost-of-Living Adjustment

Legislation comprehensively adjusting personal property exemption amounts was last enacted, on Commission recommendation, in 1994 (operative July 31, 1995).¹³ Since that time, the average cost of living in California has increased by about 20%,¹⁴ making revision of exempt amounts appropriate to account for inflation.

In addition, the California alternative bankruptcy-only exemptions have again been increased for general conformity with federal law and subjected to a triennial automatic cost-of-living adjustment.¹⁵ Thus, the alternative bankruptcy exemptions will not need to be adjusted for federal conformity, at least as long as the Bankruptcy Code continues the present exemption scheme generally mirrored in California law.¹⁶

The personal property exemptions, as adjusted and rounded, are outlined in the following table:

11. In relevant part, Section 703.110(a) provides:

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

12. See, e.g., Sections 704.020 (necessary household furnishings, appliances, provisions, wearing apparel, and other personal effects), 704.050 (necessary health aids and prosthetic and orthopedic appliances).

13. See 1995 Cal. Stat. ch. 196; *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1, 12-15 (1995). The alternative bankruptcy-only exemptions in Section 703.140(b) were also increased for conformity with federal amounts in this Commission-sponsored legislation.

14. Using the California All Urban Consumer figures, the factor from 1995 to June 2002 is 1.21. This factor is calculated by dividing the current statewide CPI of 185.9 by the 1995 annual average CPI of 154 (1982-84=100). See California Dept. of Industrial Relations, Div. of Labor Statistics, *Consumer Price Index — California* (7/19/02), at <http://www.dir.ca.gov/DLSR/statistics_research.html>. Each adjusted monetary exemption is multiplied by the 1.21 factor and then rounded to the nearest \$25 amount. This rounding approach is consistent with federal bankruptcy law. See 11 U.S.C. § 104(b)(1)(B).

15. See Section 703.140, as amended by 1998 Cal. Stat. ch. 290, § 1 (operative Jan. 1, 2000). Section 703.140(c) loosely incorporates the federal COLA, presumably including the nearest \$25 rounding principle.

16. At the time of writing, H.R. 333, a bankruptcy reform bill, was pending in Congress.

Code Civ. Proc.	Type of Property	Current	x 1.21	Rounded	Notes
§ 704.010	Motor vehicle	\$ 1,900	\$ 2,294	\$ 2,300	
§ 704.030	Residential repair materials	\$ 2,000	\$ 2,414	\$ 2,425	
§ 704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 6,036	\$ 6,025	
§ 704.060(a)(1-2)	Tools of trade 1	\$ 5,000	\$ 6,036	\$ 6,025	
§ 704.060(a)(3)	Tools of trade 2*	\$ 10,000	\$ 12,071	\$ 12,050	double 1
§ 704.060(d)(1)	Commercial vehicle 1	\$ 4,000	\$ 4,829	\$ 4,825	
§ 704.060(d)(2)	Commercial vehicle 2*	\$ 8,000	\$ 9,657	\$ 9,650	double 1
§ 704.080(b)(1)	Social Security 1	\$ 2,000	\$ 2,414	\$ 2,425	
§ 704.080(b)(2)	Social Security 2	\$ 3,000	\$ 3,621	\$ 3,625	
§ 704.080(b)(1)	Public benefits 1*	\$ 1,000	\$ 1,207	\$ 1,200	~half SS1
§ 704.080(b)(2)	Public benefits 2	\$ 1,500	\$ 1,811	\$ 1,800	~half SS2
§ 704.090(a)	Inmate trust funds	\$ 1,000	\$ 1,207	\$ 1,200	
§ 704.090(b)	Inmate trust funds limit	\$ 300	\$ 362	\$ 350	
§ 704.100(b)	Life insurance loan value	\$ 8,000	\$ 9,657	\$ 9,650	

As noted in the final column above, several exemptions are set at double the amount of other exemptions. Where an exempt amount is double another exempt amount, as for personal property used in a trade, business, or profession by spouses,¹⁷ the doubling feature should be retained, rather than applying the COLA factor to the higher amount. The same approach should apply to exemptions which are set at half some other exemption. For example, the new automatic exemption for certain public benefits directly deposited into an account¹⁸ is one-half the amount of the exemption for directly deposited Social Security payments. The relative relation between these two exemptions would be maintained in the proposed amendments.

Homestead Exemption

As in its 1995 recommendation, the Commission does not recommend any change in the amount of the homestead exemption. The homestead exemption receives frequent legislative attention, because of the obvious importance of the home, the high level of the exemption, and the role played by interest groups that can effectively sponsor legislation. As amended in 1997, the statutes provide a three-tier homestead exemption in the following amounts: a \$50,000 basic exemption, unless a special rule applies to the resident judgment debtor or spouse; a \$75,000 “family” exemption; and a \$125,000 elder or disabled exemption.¹⁹

17. Section 704.060(a)(3).

18. Section 704.080, as amended by 1998 Cal. Stat. ch. 290, § 1 (operative Jan. 1, 2000).

19. See Section 704.730, as amended by 1997 Cal. Stat. ch. 82, § 1. As introduced, the 1997 bill that increased the top tier to \$125,000 had also proposed to increase the first and second tiers to \$75,000 and \$100,000 respectively. See AB 451 (1997-98 Session), as introduced, Feb. 24, 1997.

Triennial Review

The Commission's existing duty to review exemptions every ten years should be revised to provide for review every three years, with a duty to report to the judiciary committees of the Senate and Assembly.²⁰ The proposed amendment should also include a statement of legislative intent that the dollar amount of exemptions from enforcement of money judgments should be adjusted to take account of changes in the cost of living, in general conformance with the alternate bankruptcy exemptions.

Triennial review, coupled with the statement of legislative intent, would be a substitute for implementing an automatic cost-of-living adjustment applicable to exemptions from enforcement of judgments. Automatic adjustment of exemptions from enforcement of judgments is less practicable than adjusting exemptions in bankruptcy, because there is no court or agency administering the debtor's estate and applying all exemptions at one point in time in the enforcement context.²¹

This proposed revision would not be intended to limit the Commission's discretion to recommend legislation, but would provide a mechanism for bringing changes in the cost of living to the attention of the relevant committees, even when the Commission does not intend to sponsor a bill to adjust exemptions. If this change becomes operative in 2004, the triennial duty would coincide with the triennial review under the alternate bankruptcy exemptions, and thus facilitate maintenance of the relative relationship between enforcement and bankruptcy exemptions.

20. See proposed amendments to Section 703.120 *infra*.

21. At least two states have automatic COLA provisions applicable to enforcement exemptions. See Alaska Stat. Ann. § 09.38.115 (Westlaw 2002); Minn. Stat. Ann. § 550.37(4a) (Westlaw 2002). These provisions appear to be drawn from Section 2 of the Uniform Exemptions Act (1976, 1979).

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 703.120 (amended). Review by Law Revision Commission**

2 SEC. 1. Section 703.120 of the Code of Civil Procedure is amended to read:

3 ~~703.120. (a) Ten years following the operative date of this title and every 10~~
4 ~~years thereafter, Every three years, commencing in 2004, the California Law~~
5 ~~Revision Commission shall review the exempt amounts provided in this chapter~~
6 ~~and in other statutes and report to the Senate Committee on Judiciary and the~~
7 ~~Assembly Committee on Judiciary concerning changes in the cost of living~~
8 ~~occurring during the prior three years, with respect to exemptions from~~
9 ~~enforcement of money judgments. In addition, the commission may recommend to~~
10 ~~the Governor and the Legislature any changes in exempt amounts that appear~~
11 ~~proper. It is the intent of the Legislature in prescribing the duties under this~~
12 ~~subdivision that exemptions from enforcement of money judgments should be~~
13 ~~adjusted to take account of changes in the cost of living, in general conformity~~
14 ~~with cost-of-living adjustments made to exemptions applicable only in bankruptcy.~~

15 (b) Nothing in this section precludes the commission from making
16 recommendations concerning exempt amounts more frequently than required by
17 subdivision (a) or from making recommendations concerning any other aspect of
18 this title, and the commission is authorized to maintain a continuing review of and
19 submit recommendations concerning enforcement of judgments.

20 **Comment.** Subdivision (a) of Section 703.120 is amended to provide a triennial reporting duty
21 in place of the former decennial review, and to state a general policy to make cost-of-living
22 adjustments as frequently as under bankruptcy law. See, e.g., Section 703.140(c); 11 U.S.C. §
23 104(b) (triennial federal bankruptcy exemption COLA determined by Judicial Conference of
24 United States and published in Federal Register).

25 Subdivision (b) is amended to eliminate language relevant to the former decennial review under
26 subdivision (a).

27 **Code Civ. Proc. § 703.130 (technical amendment). Federal bankruptcy exemption opt-out**

28 SEC. 2. Section 703.130 of the Code of Civil Procedure is amended to read:

29 703.130. Pursuant to the authority of ~~paragraph (1) of subsection (b) of Section~~
30 ~~522 of Title 11 of the United States Code, the exemptions set forth in subsection~~
31 ~~(d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not~~
32 ~~authorized in this state.~~

33 **Comment.** Section 703.130 is amended to accommodate the renumbering of paragraphs in
34 subsection (b) of 11 U.S.C. Section 522 by the [HR 333]. This is a technical, nonsubstantive
35 revision.

36 ☞ **Staff Note.** This correction would be needed only if the Bankruptcy Reform Act of 2001 is
37 passed in its present form, since it renumbers the referenced subparagraph in Section 522.

38 **Code Civ. Proc. § 703.140 (amended). Alternate bankruptcy exemptions**

39 SEC. 3. Section 703.140 of the Code of Civil Procedure is amended to read:

1 703.140. (a) In a case under Title 11 of the United States Code, all of the
2 exemptions provided by this chapter, including the homestead exemption, other
3 than the provisions of subdivision (b) are applicable regardless of whether there is
4 a money judgment against the debtor or whether a money judgment is being
5 enforced by execution sale or any other procedure, but the exemptions provided by
6 subdivision (b) may be elected in lieu of all other exemptions provided by this
7 chapter, as follows:

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

12 (2) If the petition is filed individually, and not jointly, for a husband or a wife,
13 the exemptions provided by this chapter other than the provisions of subdivision
14 (b) are applicable, except that, if both the husband and the wife effectively waive
15 in writing the right to claim, during the period the case commenced by filing the
16 petition is pending, the exemptions provided by the applicable exemption
17 provisions of this chapter, other than subdivision (b), in any case commenced by
18 filing a petition for either of them under Title 11 of the United States Code, then
19 they may elect to instead utilize the applicable exemptions set forth in subdivision
20 (b).

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

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

26 (1) The debtor's aggregate interest, not to exceed seventeen thousand four
27 hundred twenty-five dollars (\$17,425) in value, in real property or personal
28 property that the debtor or a dependent of the debtor uses as a residence, in a
29 cooperative that owns property that the debtor or a dependent of the debtor uses as
30 a residence, or in a burial plot for the debtor or a dependent of the debtor.

31 (2) The debtor's interest, not to exceed two thousand seven hundred seventy-five
32 dollars (\$2,775) in value, in one motor vehicle.

33 (3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value
34 in any particular item, in household furnishings, household goods, wearing
35 apparel, appliances, books, animals, crops, or musical instruments, that are held
36 primarily for the personal, family, or household use of the debtor or a dependent of
37 the debtor.

38 (4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty
39 dollars (\$1,150) in value, in jewelry held primarily for the personal, family, or
40 household use of the debtor or a dependent of the debtor.

41 (5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-
42 five dollars (\$925) plus any unused amount of the exemption provided under
43 paragraph (1), in any property.

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

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

6 (8) The debtor's aggregate interest, not to exceed in value nine thousand three
7 hundred dollars (\$9,300), in any accrued dividend or interest under, or loan value
8 of, any unmaturred life insurance contract owned by the debtor under which the
9 insured is the debtor or an individual of whom the debtor is a dependent.

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

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

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

15 (B) A veterans' benefit.

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

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

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

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

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

27 (iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b),
28 408, or 408A of the Internal Revenue Code of 1986.

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

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

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

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

39 (D) A payment, not to exceed seventeen thousand four hundred twenty-five
40 dollars (\$17,425), on account of personal bodily injury, not including pain and
41 suffering or compensation for actual pecuniary loss, of the debtor or an individual
42 of whom the debtor is a dependent.

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

4 (c) Each In a case under Title 11 of the United States Code, each dollar amount
5 in effect under ~~this section~~ subdivision (b) shall be increased in accordance with
6 the periodic adjustments of similar exemptions provided under federal bankruptcy
7 laws.

8 **Comment.** Subdivision (c) of Section 703.140 is amended to make clear that only the special
9 alternative bankruptcy exempt amounts provided in subdivision (b) are automatically increased in
10 the same manner as exemptions under federal bankruptcy laws. See 11 U.S.C. § 104(b) (federal
11 bankruptcy exemption COLA determined by Judicial Conference of United States and published
12 in Federal Register). The automatic adjustment does not apply to exemptions from enforcement
13 of money judgments, which are incorporated for bankruptcy purposes by subdivision (a). See also
14 Section 703.120 (triennial review of enforcement of money judgment exemptions). This
15 clarification is not a substantive changes, but is consistent with the legislative history of the bill
16 adding subdivision (c) to this section. See, e.g., Legislative Counsel's Digest to 2001 Cal. Stat.
17 ch. 42.

18 **Code Civ. Proc. § 704.010 (amended). Motor vehicles**

19 SEC. 4. Section 704.010 of the Code of Civil Procedure is amended to read:

20 704.010. (a) Any combination of the following is exempt in the amount of ~~one~~
21 ~~thousand nine hundred dollars (\$1,900)~~ two thousand three hundred dollars
22 (\$2,300):

23 (1) The aggregate equity in motor vehicles.

24 (2) The proceeds of an execution sale of a motor vehicle.

25 (3) The proceeds of insurance or other indemnification for the loss, damage, or
26 destruction of a motor vehicle.

27 (b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days
28 after the time the proceeds are actually received by the judgment debtor.

29 (c) For the purpose of determining the equity, the fair market value of a motor
30 vehicle shall be determined by reference to used car price guides customarily used
31 by California automobile dealers unless the motor vehicle is not listed in such
32 price guides.

33 (d) If the judgment debtor has only one motor vehicle and it is sold at an
34 execution sale, the proceeds of the execution sale are exempt in the amount of ~~one~~
35 ~~thousand nine hundred dollars (\$1,900)~~ two thousand three hundred dollars
36 (\$2,300) without making a claim. The levying officer shall consult and may rely
37 upon the records of the Department of Motor Vehicles in determining whether the
38 judgment debtor has only one motor vehicle. In the case covered by this
39 subdivision, the exemption provided by subdivision (a) is not available.

40 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
41 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted
42 amounts were determined by applying the California Consumer Price Index (June 2002) for all
43 urban consumers and rounding to the nearest \$25.

1 **Code Civ. Proc. § 704.030 (amended). Materials for repair or improvement of dwelling**

2 SEC. 5. Section 704.030 of the Code of Civil Procedure is amended to read:

3 704.030. Material that in good faith is about to be applied to the repair or
4 improvement of a residence is exempt if the equity in the material does not exceed
5 ~~two thousand dollars (\$2,000)~~ two thousand four hundred twenty-five dollars
6 (\$2,425) in the following cases:

7 (a) If purchased in good faith for use in the repair or improvement of the
8 judgment debtor's principal place of residence.

9 (b) Where the judgment debtor and the judgment debtor's spouse live separate
10 and apart, if purchased in good faith for use in the repair or improvement of the
11 spouse's principal place of residence.

12 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
13 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 3. Adjusted
14 amounts were determined by applying the California Consumer Price Index (June 2002) for all
15 urban consumers and rounding to the nearest \$25.

16 **Code Civ. Proc. § 704.040 (amended). Jewelry, heirlooms, works of art**

17 SEC. 6. Section 704.040 of the Code of Civil Procedure is amended to read:

18 704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the
19 aggregate equity therein does not exceed ~~five thousand dollars (\$5,000)~~ six
20 thousand twenty-five dollars (\$6,025).

21 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
22 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 4. Adjusted
23 amounts were determined by applying the California Consumer Price Index (June 2002) for all
24 urban consumers and rounding to the nearest \$25.

25 **Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or**
26 **profession**

27 SEC. 7. Section 704.060 of the Code of Civil Procedure is amended to read:

28 704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings,
29 books, equipment, one commercial motor vehicle, one vessel, and other personal
30 property are exempt to the extent that the aggregate equity therein does not
31 exceed:

32 (1) ~~Five thousand dollars (\$5,000)~~ Six thousand twenty-five dollars (\$6,025), if
33 reasonably necessary to and actually used by the judgment debtor in the exercise
34 of the trade, business, or profession by which the judgment debtor earns a
35 livelihood.

36 (2) ~~Five thousand dollars (\$5,000)~~ Six thousand twenty-five dollars (\$6,025), if
37 reasonably necessary to and actually used by the spouse of the judgment debtor in
38 the exercise of the trade, business, or profession by which the spouse earns a
39 livelihood.

40 (3) ~~Ten thousand dollars (\$10,000)~~ Twelve thousand fifty dollars (\$12,050), if
41 reasonably necessary to and actually used by the judgment debtor and by the
42 spouse of the judgment debtor in the exercise of the same trade, business, or

1 profession by which both earn a livelihood. In the case covered by this paragraph,
2 the exemptions provided in paragraphs (1) and (2) are not available.

3 (b) If property described in subdivision (a) is sold at an execution sale, or if it
4 has been lost, damaged, or destroyed, the proceeds of the execution sale or of
5 insurance or other indemnification are exempt for a period of 90 days after the
6 proceeds are actually received by the judgment debtor or the judgment debtor's
7 spouse. The amount exempt under this subdivision is the amount specified in
8 subdivision (a) that applies to the particular case less the aggregate equity of any
9 other property to which the exemption provided by subdivision (a) for the
10 particular case has been applied.

11 (c) Notwithstanding subdivision (a), a motor vehicle is not exempt under
12 subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is
13 reasonably adequate for use in the trade, business, or profession for which the
14 exemption is claimed under this section.

15 (d) Notwithstanding subdivisions (a) and (b):

16 (1) The amount of the exemption for a commercial motor vehicle under
17 paragraph (1) or (2) of subdivision (a) is limited to ~~four thousand dollars (\$4,000)~~
18 four eight hundred twenty-five thousand dollars (\$4,825).

19 (2) The amount of the exemption for a commercial motor vehicle under
20 paragraph (3) of subdivision (a) is limited to ~~eight thousand dollars (\$8,000)~~ nine
21 thousand six hundred fifty dollars (\$9,650).

22 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
23 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 5. Adjusted
24 amounts were determined by applying the California Consumer Price Index (June 2002) for all
25 urban consumers and rounding to the nearest \$25, except that the amounts in subdivisions (a)(3)
26 and (d)(2) are determined by doubling the amounts in subdivisions (a)(1)-(2) and (d)(1),
27 respectively.

28 **Code Civ. Proc. § 704.080 (amended). Deposit account in which social security or public**
29 **benefit payments are directly deposited**

30 SEC. 8. Section 704.080 of the Code of Civil Procedure is amended to read:

31 704.080. (a) For the purposes of this section:

32 (1) "Deposit account" means a deposit account in which payments of public
33 benefits or social security benefits are directly deposited by the government or its
34 agent.

35 (2) "Social security benefits" means payments authorized by the Social Security
36 Administration for regular retirement and survivors' benefits, supplemental
37 security income benefits, coal miners' health benefits, and disability insurance
38 benefits. "Public benefits" means aid payments authorized pursuant to subdivision
39 (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive
40 services as described in Section 11323.2 of the Welfare and Institutions Code, and
41 general assistance payments made pursuant to Section 17000.5 of the Welfare and
42 Institutions Code.

1 (b) A deposit account is exempt without making a claim in the following
2 amount:

3 (1) ~~One thousand dollars (\$1,000)~~ One thousand two hundred dollars (\$1,200)
4 where one depositor is the designated payee of the directly deposited public
5 benefits payments, and ~~two thousand dollars (\$2,000)~~ two thousand four hundred
6 twenty-five dollars (\$2,425) where one depositor is the designated payee of
7 directly deposited social security payments.

8 (2) ~~One thousand five hundred dollars (\$1,500)~~ One thousand eight hundred
9 dollars (\$1,800) where two or more depositors are the designated payees of the
10 directly deposited public benefits payments, unless those depositors are joint
11 payees of directly deposited payments that represent a benefit to only one of the
12 depositors, in which case the exempt amount is ~~one thousand dollars (\$1,000)~~.
13 ~~Three thousand dollars (\$3,000)~~ one thousand two hundred dollars (\$1,200). Three
14 thousand six hundred twenty-five dollars (\$3,625) where two or more depositors
15 are the designated payees of directly deposited social security payments, unless
16 those depositors are joint payees of directly deposited payments that represent a
17 benefit to only one of the depositors, in which case the exempt amount is ~~two~~
18 ~~thousand dollars (\$2,000)~~ two thousand four hundred twenty-five dollars (\$2,425).

19 (c) The amount of a deposit account that exceeds the exemption provided in
20 subdivision (b) is exempt to the extent that it consists of payments of public
21 benefits or social security benefits.

22 (d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3,
23 when a deposit account is levied upon or otherwise sought to be subjected to the
24 enforcement of a money judgment, the financial institution that holds the deposit
25 account shall either place the amount that exceeds the exemption provided in
26 subdivision (b) in a suspense account or otherwise prohibit withdrawal of that
27 amount pending notification of the failure of the judgment creditor to file the
28 affidavit required by this section or the judicial determination of the exempt status
29 of the amount. Within 10 business days after the levy, the financial institution shall
30 provide the levying officer with a written notice stating (1) that the deposit account
31 is one in which payments of public benefits or social security benefits are directly
32 deposited by the government or its agent and (2) the balance of the deposit account
33 that exceeds the exemption provided by subdivision (b). Promptly upon receipt of
34 the notice, the levying officer shall serve the notice on the judgment creditor.
35 Service shall be made personally or by mail.

36 (e) Notwithstanding the procedure prescribed in Article 2 (commencing with
37 Section 703.510), whether there is an amount exempt under subdivision (c) shall
38 be determined as follows:

39 (1) Within five days after the levying officer serves the notice on the judgment
40 creditor under subdivision (d), a judgment creditor who desires to claim that the
41 amount is not exempt shall file with the court an affidavit alleging that the amount
42 is not exempt and file a copy with the levying officer. The affidavit shall be in the
43 form of the notice of opposition provided by Section 703.560, and a hearing shall

1 be set and held, and notice given, as provided by Sections 703.570 and 703.580.
2 For the purpose of this subdivision, the “notice of opposition to the claim of
3 exemption” in Sections 703.570 and 703.580 means the affidavit under this
4 subdivision.

5 (2) If the judgment creditor does not file the affidavit with the levying officer
6 and give notice of hearing pursuant to Section 703.570 within the time provided in
7 paragraph (1), the levying officer shall release the deposit account and shall notify
8 the financial institution.

9 (3) The affidavit constitutes the pleading of the judgment creditor, subject to the
10 power of the court to permit amendments in the interest of justice. The affidavit is
11 deemed controverted and no counteraffidavit is required.

12 (4) At a hearing under this subdivision, the judgment debtor has the burden of
13 proving that the excess amount is exempt.

14 (5) At the conclusion of the hearing, the court by order shall determine whether
15 or not the amount of the deposit account is exempt pursuant to subdivision (c) in
16 whole or in part and shall make an appropriate order for its prompt disposition. No
17 findings are required in a proceeding under this subdivision.

18 (6) Upon determining the exemption claim for the deposit account under
19 subdivision (c), the court shall immediately transmit a certified copy of the order
20 of the court to the financial institution and to the levying officer. If the order
21 determines that all or part of the excess is exempt under subdivision (c), with
22 respect to the amount of the excess which is exempt, the financial institution shall
23 transfer the exempt excess from the suspense account or otherwise release any
24 restrictions on its withdrawal by the judgment debtor. The transfer or release shall
25 be effected within three business days of the receipt of the certified copy of the
26 court order by the financial institution.

27 (f) If the judgment debtor claims that a portion of the amount is exempt other
28 than pursuant to subdivision (c), the claim of exemption shall be made pursuant to
29 Article 2 (commencing with Section 703.510). If the judgment debtor also opposes
30 the judgment creditor’s affidavit regarding an amount exempt pursuant to
31 subdivision (c), both exemptions shall be determined at the same hearing, provided
32 the judgment debtor has complied with Article 2 (commencing with Section
33 703.510).

34 **Comment.** Section 704.080 is amended to adjust the social security payments exemption
35 amounts for cost-of-living increases since the section was last amended in 1995. See 1995 Cal.
36 Stat. ch. 196, § 6. The public benefits exemption amounts are also adjusted for consistency with
37 the scheme enacted in 1998 of setting this exemption at 50% of the social security payments
38 exemption. See 1998 Cal. Stat. ch. 290, § 1. Adjusted amounts were determined by applying the
39 California Consumer Price Index (June 2002) for all urban consumers and rounding to the nearest
40 \$25.

41 **Code Civ. Proc. § 704.090 (amended). Inmate’s trust account**

42 SEC. 9. Section 704.090 of the Code of Civil Procedure is amended to read:

1 704.090. (a) The funds of a judgment debtor confined in a prison or facility
2 under the jurisdiction of the Department of Corrections or the Department of the
3 Youth Authority or confined in any county or city jail, road camp, industrial farm,
4 or other local correctional facility, held in trust for or to the credit of the judgment
5 debtor, in an inmate's trust account or similar account by the state, county, or city,
6 or any agency thereof, are exempt without making a claim in the amount of ~~one~~
7 ~~thousand dollars (\$1,000)~~ one thousand two hundred dollars (\$1,200). If the
8 judgment debtor is married, each spouse is entitled to a separate exemption under
9 this section or the spouses may combine their exemptions.

10 (b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or
11 order imposed pursuant to subdivision (a) of Section 13967 of the Government
12 Code, as operative on or before September 28, 1994, or Section 1203.04 of the
13 Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the
14 Penal Code, the funds held in trust for, or to the credit of, a judgment debtor
15 described in subdivision (a) are exempt in the amount of ~~three hundred dollars~~
16 ~~(\$300)~~ three hundred fifty dollars (\$350) without making a claim.

17 **Comment.** Subdivision (a) of Section 704.090 is amended to adjust the exemption amount for
18 cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, §
19 2. Adjusted amounts were determined by applying the California Consumer Price Index (June
20 2002) for all urban consumers and rounding to the nearest \$25.

21 The minimum exemption in subdivision (b), which was added in 1996, is adjusted in the same
22 manner as subdivision (a).

23 ☞ **Staff Note.** At the June meeting, the Commission directed the staff to examine broadening the
24 language of subdivision (b) to cover all claims by crime victims, beyond the special restitution
25 claims covered by the statutes. The staff considered adding a reference to (1) restitution fines or
26 orders under the listed statutes or "under any other statute, or (2) a money judgment in favor of
27 the victim of a crime committed by the judgment debtor to the extent it compensates for injury
28 directly arising from the crime." The specific references to the three statutes appears to be the
29 boilerplate used in this area. See, e.g., Penal Code § 2085.5.

30 The staff is extremely dubious about adding this language. As discussed in connection with
31 new topics on this meeting's agenda (Memorandum 2002-38, pp. 23-24), the area of crime victim
32 restitution is fraught with difficulties. The statutes are complex and frequently amended. The
33 constitutional language implemented by the statutory "restitution fine" and order scheme is as
34 broad as it can be, so there is nothing much to be done in terms of broadening the scope of the
35 limited exemption in Section 704.090(b). If the implementing statutes are not broad enough, they
36 should be revised rather than this relatively minor exemption provision, which has the effect of
37 shifting \$700 from the exempt to the non-exempt column.

38 Although the staff has not made a detailed study of this area, Penal Code Section 1202.4 looks
39 sufficiently broad in its current form:

40 1202.4. (a)(1) It is the intent of the Legislature that a victim of crime who incurs any
41 economic loss as a result of the commission of a crime shall receive restitution directly from
42 any defendant convicted of that crime.

43 (2) Upon a person being convicted of any crime in the State of California, the court shall
44 order the defendant to pay a fine in the form of a penalty assessment in accordance with
45 Section 1464.

46 (3) The court, in addition to any other penalty provided or imposed under the law, shall
47 order the defendant to pay both of the following:

48 (A) A restitution fine in accordance with subdivision (b).

1 (B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which
2 shall be enforceable as if the order were a civil judgment.

3

4 (f) In every case in which a victim has suffered economic loss as a result of the defendant's
5 conduct, the court shall require that the defendant make restitution to the victim or victims in
6 an amount established by court order, based on the amount of loss claimed by the victim or
7 victims or any other showing to the court. If the amount of loss cannot be ascertained at the
8 time of sentencing, the restitution order shall include a provision that the amount shall be
9 determined at the direction of the court. The court shall order full restitution unless it finds
10 compelling and extraordinary reasons for not doing so, and states them on the record.

11 (1) The defendant has the right to a hearing before a judge to dispute the determination of
12 the amount of restitution. The court may modify the amount, on its own motion or on the
13 motion of the district attorney, the victim or victims, or the defendant. If a motion is made for
14 modification of a restitution order, the victim shall be notified of that motion at least 10 days
15 prior to the proceeding held to decide the motion.

16 (2) Determination of the amount of restitution ordered pursuant to this subdivision shall not
17 be affected by the indemnification or subrogation rights of any third party. Restitution
18 ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund
19 to the extent that the victim, as defined in subdivision (k), has received assistance from the
20 Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of
21 Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

22 (3) To the extent possible, the restitution order shall be prepared by the sentencing court,
23 shall identify each victim and each loss to which it pertains, and shall be of a dollar amount
24 that is sufficient to fully reimburse the victim or victims for every determined economic loss
25 incurred as the result of the defendant's criminal conduct, including, but not limited to, all of
26 the following:

27 (A) Full or partial payment for the value of stolen or damaged property. The value of stolen
28 or damaged property shall be the replacement cost of like property, or the actual cost of
29 repairing the property when repair is possible.

30 (B) Medical expenses.

31 (C) Mental health counseling expenses.

32 (D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor,
33 wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for
34 the injured minor. Lost wages shall include any commission income as well as any base
35 wages. Commission income shall be established by evidence of commission income during
36 the 12-month period prior to the date of the crime for which restitution is being ordered,
37 unless good cause for a shorter time period is shown.

38 (E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by
39 the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in
40 assisting the police or prosecution. Lost wages shall include any commission income as well
41 as any base wages. Commission income shall be established by evidence of commission
42 income during the 12-month period prior to the date of the crime for which restitution is
43 being ordered, unless good cause for a shorter time period is shown.

44 (F) Noneconomic losses, including, but not limited to, psychological harm, for felony
45 violations of Section 288.

46 (G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or
47 loss, as determined by the court.

48 (H) Actual and reasonable attorney's fees and other costs of collection accrued by a private
49 entity on behalf of the victim.

50 (I) Expenses incurred by an adult victim in relocating away from the defendant, including,
51 but not limited to, deposits for utilities and telephone service, deposits for rental housing,

1 temporary lodging and food expenses, clothing, and personal items. Expenses incurred
2 pursuant to this section shall be verified by law enforcement to be necessary for the personal
3 safety of the victim or by a mental health treatment provider to be necessary for the emotional
4 well-being of the victim.

5 (J) Expenses to install or increase residential security incurred related to a crime, as defined
6 in subdivision (c) of Section 667.5, including, but not limited to, a home security device or
7 system, or replacing or increasing the number of locks.

8 (K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to
9 or the vehicle operational by the victim, if the victim is permanently disabled, whether the
10 disability is partial or total, as a direct result of the crime.

11 (4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided
12 assistance to or on behalf of a victim or derivative victim pursuant to Article 1 (commencing
13 with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code,
14 the amount of assistance provided shall be presumed to be a direct result of the defendant's
15 criminal conduct and shall be included in the amount of the restitution ordered.

16 (B) The amount of assistance provided by the Restitution Fund shall be established by
17 copies of bills submitted to the State Board of Control reflecting the amount paid by the board
18 and whether the services for which payment was made were for medical or dental expenses,
19 funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation.
20 Certified copies of these bills provided by the State Board of Control and redacted to protect
21 the privacy and safety of the victim or any legal privilege, together with a statement made
22 under penalty of perjury by the custodian of records that those bills were submitted to and
23 were paid by the State Board of Control, shall be sufficient to meet this requirement.

24 (C) If the defendant offers evidence to rebut the presumption established by this paragraph,
25 the court may release additional information contained in the records of the State Board of
26 Control to the defendant only after reviewing that information in camera and finding that the
27 information is necessary for the defendant to dispute the amount of the restitution order.

28 (5) Except as provided in paragraph (6), in any case in which an order may be entered
29 pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all
30 assets, income, and liabilities in which the defendant held or controlled a present or future
31 interest as of the date of the defendant's arrest for the crime for which restitution may be
32 ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use
33 the court may make of the disclosure shall be subject to the restrictions of subdivision (g).
34 The disclosure shall be signed by the defendant upon a form approved or adopted by the
35 Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully
36 states as true any material matter that he or she knows to be false on the disclosure required
37 by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or
38 another provision of law provides for a greater penalty.

39 (6) A defendant who fails to file the financial disclosure required in paragraph (5), but who
40 has filed a financial affidavit or financial information pursuant to subdivision (c) of Section
41 987, shall be deemed to have waived the confidentiality of that affidavit or financial
42 information as to a victim in whose favor the order of restitution is entered pursuant to
43 subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure
44 required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

45 (7) Except as provided in paragraph (6), the defendant shall file the disclosure with the
46 clerk of the court no later than the date set for the defendant's sentencing, unless otherwise
47 directed by the court. The disclosure may be inspected or copied as provided by subdivision
48 (b), (c), or (d) of Section 1203.05.

49 (8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of
50 filing with the clerk by requiring that the defendant's disclosure be submitted as an
51 attachment to, and be available to, those authorized to receive the following:

1 (A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b)
2 of Section 1203 or subdivision (g) of Section 1203.

3 (B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

4 (C) Any report by the probation officer, or any information submitted by the defendant
5 applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

6 (9) The court may consider a defendant's unreasonable failure to make a complete
7 disclosure pursuant to paragraph (5) as any of the following:

8 (A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of
9 Section 1170.

10 (B) A factor indicating that the interests of justice would not be served by admitting the
11 defendant to probation under Section 1203.

12 (C) A factor indicating that the interests of justice would not be served by conditionally
13 sentencing the defendant under Section 1203.

14 (D) A factor indicating that the interests of justice would not be served by imposing less
15 than the maximum fine and sentence fixed by law for the case.

16 (10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph
17 (5) shall not delay entry of an order of restitution or pronouncement of sentence. In
18 appropriate cases, the court may do any of the following:

19 (A) Require the defendant to be examined by the district attorney pursuant to subdivision
20 (h).

21 (B) If sentencing the defendant under Section 1170, provide that the victim shall receive a
22 copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the
23 defendant's employment, occupation, finances, and liabilities.

24 (C) If sentencing the defendant under Section 1203, set a date and place for submission of
25 the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

26 (g) The court shall order full restitution unless it finds compelling and extraordinary reasons
27 for not doing so, and states those reasons on the record. A defendant's inability to pay shall
28 not be considered a compelling and extraordinary reason not to impose a restitution order, nor
29 shall inability to pay be a consideration in determining the amount of a restitution order.

30

31 This excerpt illustrates both the breadth of the restitution order provision and its extreme
32 complexity. Because it looks sufficiently broad, the staff would not attempt to broaden the special
33 exemption in Section 704.090(b), and because it is so complex, we are reluctant to tinker with it.

34 **Code Civ. Proc. § 704.100 (amended). Life insurance, endowment, annuity policies**

35 SEC. 10. Section 704.100 of the Code of Civil Procedure is amended to read:

36 704.100. (a) Unmatured life insurance policies (including endowment and
37 annuity policies), but not the loan value of such policies, are exempt without
38 making a claim.

39 (b) The aggregate loan value of unmaturred life insurance policies (including
40 endowment and annuity policies) is subject to the enforcement of a money
41 judgment but is exempt in the amount of ~~eight thousand dollars (\$8,000)~~ nine
42 thousand six hundred fifty dollars (\$9,650). If the judgment debtor is married, each
43 spouse is entitled to a separate exemption under this subdivision, and the
44 exemptions of the spouses may be combined, regardless of whether the policies
45 belong to either or both spouses and regardless of whether the spouse of the
46 judgment debtor is also a judgment debtor under the judgment. The exemption

1 provided by this subdivision shall be first applied to policies other than the policy
2 before the court and then, if the exemption is not exhausted, to the policy before
3 the court.

4 (c) Benefits from matured life insurance policies (including endowment and
5 annuity policies) are exempt to the extent reasonably necessary for the support of
6 the judgment debtor and the spouse and dependents of the judgment debtor.

7 **Comment.** Section 704.100 is amended to adjust the exemption amount for cost-of-living
8 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 7. Adjusted
9 amounts were determined by applying the California Consumer Price Index (June 2002) for all
10 urban consumers and rounding to the nearest \$25.

11 **Welf. & Inst. Code § 17409 (amended). Exemptions from county claim against indigent**

12 SEC. 11. Section 17409 of the Welfare and Institutions Code is amended to read:

13 17409. There shall be exempt from the transfers and grants authorized by
14 Section 17109 and from execution on claims under Section 17403 against property
15 acquired by persons for the support of whom public moneys have been expended
16 all of the following property:

17 (a) ~~Cash to the amount of fifty dollars (\$50)~~ not exceeding one hundred dollars
18 (\$100).

19 (b) ~~Personal effects and household furniture to the value of five hundred dollars~~
20 ~~(\$500)~~ not exceeding one thousand dollars (\$1,000) in value.

21 (c) An interment space, crypt, or niche intended for the interment of the
22 applicant or recipient of aid.

23 (d) ~~Funds placed in trust for funeral or burial expenses to the extent that such~~
24 ~~funds do not exceed the sum of five hundred dollars (\$500)~~ not exceeding one
25 thousand dollars (\$1,000).

26 (e) ~~Insurance policies having an actual cash surrender value of not to exceed five~~
27 ~~hundred dollars (\$500)~~ not exceeding one thousand dollars (\$1,000).

28 (f) ~~Real or personal property of a recipient of public assistance, with respect to~~
29 ~~aid or county hospital care granted after May 21, 1963.~~

30 (g) For a period of six months from the date of receipt, the compensation
31 received from a public entity which acquires for a public use a dwelling actually
32 owned and occupied by the recipient. Such compensation shall be exempt in the
33 amount, over and above all liens and encumbrances, provided by Section 704.730
34 of the Code of Civil Procedure.

35 (h) Relocation benefits shall be exempt as provided by Section 704.180 of the
36 Code of Civil Procedure.

37 No county shall withhold emergency medical or hospital care from any person
38 pending the person giving security for reimbursement to the county for the care or
39 hospitalization to be provided to the person.

40 **Comment.** Section 17409 is amended to double the amount of the exemption values, which
41 were set in 1945 or 1959. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. & Inst. Code § 2611)
42 (cash and personal effects); 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses, insurance cash value).

1 The section is also amended to make technical, nonsubstantive revisions. In subdivision (f), the
2 reference to May 21, 1963, is deleted because it is now unnecessary.

3 ☞ **Staff Note.** This section applies to recoupment from an indigent’s property for county aid.
4 The Commission did not propose changing these amounts in connection with the Enforcement of
5 Judgments law in the early 1980s, nor in the 1994-95 decennial exemption review. These
6 exemptions are limited in scope, but they may be covered by the charge under Code of Civil
7 Procedure Section 703.120 to “review exempt amounts ... in other statutes.”

8 The amounts in this section have not been changed since 1965. In fact, the cash and personal
9 effects amounts haven’t changed since 1945. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. &
10 Inst. Code § 2611, the predecessor of Section 17409). The other amounts haven’t changed since
11 1959. See 1959 Cal. Stat. ch. 1443, § 1 (amending Section 2611).

12 Today, \$50 from 1945 would be about \$484, and from 1959 would be about \$294. In the last
13 decennial review, the Commission recommended doubling most exemptions from the amounts
14 existing in 1983. The staff has taken this conservative approach in this section now, even though
15 it is far below the multiplier of 5-10 that would be required to make a true COLA adjustment to
16 these amounts. Another option would be to double the amounts to catch up to the 1995 step and
17 then apply the 1995-now factor used in the other exemptions. This would increase these amounts
18 by an additional 20% or so.
