

CALIFORNIA LAW REVISION COMMISSION

DISCUSSION DRAFT

Exemptions from Enforcement of Money Judgments: Second Decennial Review

September 2002

This discussion draft is being distributed so that interested persons 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 any legislation the Commission plans to recommend to the Legislature.

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

The Commission often substantially revises its proposals as a result of the comments it receives. Hence, this discussion draft is not necessarily what the Commission will submit to the Legislature.

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SUMMARY

Pursuant to its statutory duty to review dollar amounts of exemptions from enforcement of judgments, the Law Revision Commission proposes adjusting personal property monetary exemptions to account for cost-of-living increases since the last review in 1995. In addition, the Commission proposes implementation of an automatic triennial cost-of-living adjustment, consistent with federal bankruptcy law to keep pace with inflation without the need for legislation.

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

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS: SECOND DECENNIAL REVIEW

1 The Enforcement of Judgments Law¹ charges the Law Revision Commission
2 with the duty to review the dollar amount of debtors' exemptions every 10 years
3 and to recommend any changes in amounts "that appear proper."² As a result of its
4 second decennial review, the Commission proposes increasing the amount of per-
5 sonal property exemptions by approximately 20% to adjust for changes in the cost
6 of living since the last comprehensive review. The Commission also proposes
7 implementation of an automatic triennial cost-of-living adjustment for consistency
8 with the automatic adjustment of California's alternative bankruptcy exemptions.

9 **Background**

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

14 Existing law provides seven personal property exemptions that are subject to
15 dollar limitations: motor vehicles,³ residential repair materials,⁴ jewelry, heir-
16 looms, and works of art,⁵ tools of a trade, business, or profession,⁶ directly
17 deposited Social Security and public benefit payments,⁷ inmate trust accounts,⁸
18 and life insurance and annuity loan value.⁹ Some of these exemptions are
19 increased in the case of marital property or where both spouses are debtors,¹⁰ but
20 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 periods run from July 1, 1983, the operative date of the Enforcement of Judgments Law. The first review was deferred until 1994 as authorized by former Government Code Section 7550.5 (enacted by 1992 Cal. Stat. ch. 710, § 1; repealed under its own terms, Jan. 1, 1995). The period of this second decennial review is counted from the original 1983 operative date.

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).

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

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

10 **Cost-of-Living Adjustment**

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

16 In addition, the California alternative bankruptcy-only exemptions have recently
17 been increased for general conformity with the federal amounts and subjected to
18 an automatic triennial cost-of-living adjustment through incorporation of federal
19 law.¹⁵ Thus, the alternative bankruptcy exemptions no longer need to be adjusted
20 with respect to inflation.¹⁶

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>.

The most recent monthly figure is used to set the basis before the triennial adjustment commences in 2007 under the proposed general rule. This is necessary to compensate as much as possible for the change in the CPI between the 1995 revisions and the likely January 1, 2004, operative date of legislation that would implement this proposal. See proposed Section 703.150 *infra*.

15. See Section 703.140, as amended by 1998 Cal. Stat. ch. 290, § 1 (operative Jan. 1, 2000). The amounts in Section 703.140(b) are identical to the federal bankruptcy exemptions (11 U.S.C. § 522(d)), except that there is no cap on the aggregate personal property exemption (compare Section 703.140(b)(3) with 11 U.S.C. § 522(d)(3)), and the limit on the wildcard exemption applicable where the debtor does not claim the residence exemption is nearly double in California (compare Section 703.140(b)(5) with 11

1 To account for changes in the cost of living since 1995, and to catch up with the
 2 recent bankruptcy-only revisions, the Commission recommends amending the per-
 3 sonal property enforcement of judgment exemptions as set out in the following
 4 table, with amounts rounded to the nearest \$25:¹⁷

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			not raised ¹⁸
§ 704.100(b)	Life insurance loan value	\$ 8,000	\$ 9,657	\$ 9,650	

5 As noted in the final column above, two exemptions are set at double the amount
 6 of other exemptions. Where an exempt amount is double another exempt amount,
 7 as for personal property used in a trade, business, or profession by spouses,¹⁹ the
 8 doubling feature should be retained, rather than applying the COLA factor to the
 9 higher amount. The same approach should apply to exemptions which are set at
 10 half some other exemption. For example, the automatic exemption for certain pub-
 11 lic benefits directly deposited into an account²⁰ is one-half the amount of the
 12 exemption for directly deposited Social Security payments. The relative relation
 13 between these two exemptions would be maintained in the proposal.

U.S.C. § 522(d)(5)). Section 703.140(c) loosely incorporates the federal bankruptcy automatic COLA rule, presumably including the nearest \$25 rounding principle.

16. At the time of writing, H.R. 333, a bankruptcy reform bill, was pending in Congress. This bill would not affect the automatic COLA or the dollar amounts of exemptions under the federal scheme. The California bankruptcy-only provisions are, of course, independent of the federal exemptions.

17. The \$25 rounding figure is drawn from federal bankruptcy law. See 11 U.S.C. § 104(b)(1)(B).

18. The special \$300 exemption of inmate trust funds as to claims for victims' restitution fines and orders would not be subject to the automatic COLA, in recognition of the special status of this provision.

19. Section 704.060(a)(3).

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

1 **Homestead Exemption**

2 As in its 1995 recommendation, the Commission does not recommend any
3 change in the amount of the homestead exemption. The homestead exemption
4 receives frequent legislative attention, because of the obvious importance of the
5 home, the high level of the exemption, and the role played by interest groups that
6 can effectively sponsor legislation. As amended in 1997, the statutes provide a
7 three-tier homestead exemption in the following amounts: a \$50,000 basic exemp-
8 tion, unless a special rule applies to the resident judgment debtor or spouse; a
9 \$75,000 “family” exemption; and a \$125,000 elder or disabled exemption.²¹

10 **Automatic Triennial Cost-of-Living Adjustment**

11 The Commission’s existing duty to review exemption statutes every ten years
12 should be supplemented with an automatic triennial cost-of-living adjustment.²²
13 This will bring the enforcement of judgments personal property exemptions in line
14 with the automatic COLA applicable to the bankruptcy-only exemptions. In addi-
15 tion, since a debtor filing for personal bankruptcy in California can choose
16 between the bankruptcy-only exemptions or the enforcement of judgment exemp-
17 tions, the relative dollar relationship between the two sets of exemptions will be
18 preserved over time.

19 Automatic COLA provisions relieve the Legislature of the burden of considering
20 routine adjustments needed to preserve important protections in the face of infla-
21 tion. Utilization of this simple and practical approach has grown in recent decades.
22 There are many examples scattered throughout the California codes, applicable to
23 retirement benefits,²³ welfare payments,²⁴ taxes,²⁵ campaign spending limits,²⁶ and
24 a variety of other functions.²⁷

25 The Commission recommends using the California All Urban Consumer Price
26 Index²⁸ as the best single measure of cost-of-living changes affecting Californians.
27 This index should be used to determine the appropriate adjustments of both the
28 enforcement of judgments exemptions and the bankruptcy-only exemptions. In
29 bankruptcy, this will result in a divergence from the similar amounts provided in

21. 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.

22. See proposed Section 703.150 *infra*.

23. E.g., Gov’t Code §§ 9360.9 (legislative retirement), 21310-21337.1 (public employees’ retirement), 31870 (county employees’ retirement).

24. E.g., Welf. & Inst. Code §§ 11453 (AFDC), 12201(i) (aged, blind, and disabled).

25. E.g., Rev. & Tax. Code §§ 51, 2212.

26. Gov’t Code § 82001.

27. 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).

28. See note 14 *supra*.

1 the federal Bankruptcy Code. This is not significant, however, because California
2 has opted out of the federal exemptions,²⁹ and it is preferable to maintain the rela-
3 tive relationship between the two sets of exemptions available in California
4 bankruptcy filings.

5 Responsibility for determining the appropriate COLA factor should be placed on
6 the Judicial Council. This is appropriate because the Judicial Council has respon-
7 sibility for rules of practice and procedure under the Enforcement of Judgments
8 Law, and a specific duty to prepare exemption claim informational forms.³⁰ This
9 responsibility would also be analogous to the role of the Judicial Conference of the
10 United States in determining and publishing the COLA factor under the
11 Bankruptcy Code.³¹

12 An objection to automatic adjustments of exemptions is that the applicable
13 amount of an exemption would be a different amount than stated in the statute. Of
14 course, this objection applies to any of the scores of dollar amounts provided by
15 statute that are subject to automatic COLA provisions. In bankruptcy, the exemp-
16 tions are applied in a judicial proceeding in one time-frame, facilitating easy
17 determination of the correct exemption amounts. To address the issue in state
18 enforcement of judgments proceedings, the Judicial Council exemption claim
19 form³² would be required to list the amount of personal property exemptions and
20 state the date of the next scheduled cost-of-living adjustment. This would enable
21 parties to quickly determine the appropriate amount and be on notice of impending
22 changes where the notice is received near the time of a scheduled adjustment. In
23 practical terms, parties are far more likely to see the form than the statute. In
24 addition, exemption claims ultimately are determined in court proceedings, where
25 any issues concerning the correct amount of the exemption can be resolved.³³

26 Contrary to the bankruptcy situation, enforcement of a judgment may take place
27 over a number of years, as the creditor discovers the debtor's assets and seeks to
28 apply them to the satisfaction of the money judgment. Thus, exemptions in dif-
29 ferent amounts may be applicable in the same case. But this is no different than the
30 situation under existing law, because the Legislature may change exemptions from
31 time to time,³⁴ and the amount of a debtor's exemption is generally locked in when
32 the creditor's lien attaches to the property.³⁵ Thus, a creditor's lien on specific
33 property, claimed to be exempt, will not be affected by later increases in the
34 exempt amount, whether by legislative action or an automatic COLA.

29. Section 703.130.

30. See Section 681.030.

31. See 11 U.S.C. § 104.

32. See Judicial Council Form EJ-155.

33. See generally Sections 703.510-703.610.

34. See also Section 703.060 (specific reservation of power to change exemptions).

35. See Section 703.100.

1 If the proposed law becomes operative in 2004, the automatic triennial adjust-
2 ment applicable to the bankruptcy-only exemptions would coincide with the tri-
3 ennial COLA operative under the Bankruptcy Code, thereby maintaining consis-
4 tent timing with federal law. The automatic triennial adjustment of the enforce-
5 ment of judgments personal property exemptions would not take place until April
6 2007, because these exemptions will have been updated by statute in 2004, making
7 a 2004 automatic adjustment redundant.

8 **Exemptions from County Aid Reimbursement**

9 Welfare and Institutions Code Section 17409 provides a specialized exemption
10 for reimbursement claims against recipients of county aid.³⁶ These subsistence
11 level exemptions have not been revised since 1959,³⁷ and other amounts date back
12 to 1945.³⁸

13 The proposed legislation would double these exempt amounts to make some
14 adjustment for inflation, although this is nowhere near the five to 10 times
15 multiplier that would be required to adjust for inflation since 1959 and 1945,
16 respectively. The Commission is not proposing to subject these exemptions to the
17 automatic COLA provision, as they are outside the mainstream of debtor-creditor
18 law.

36. For the text of this provision, see proposed amendments to Welf. & Inst. Code § 17409 *infra*.

37. See 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses, insurance cash value).

38. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. & Inst. Code § 2611) (cash and personal effects).

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 681.030 (amended). Judicial Council rules**

2 SECTION 1. Section 681.030 of the Code of Civil Procedure is amended to
3 read:

4 681.030. (a) The Judicial Council may provide by rule for the practice and
5 procedure in proceedings under this title.

6 (b) The Judicial Council may prescribe the form of the applications, notices,
7 orders, writs, and other papers to be used under this title. The Judicial Council may
8 prescribe forms in languages other than English. The timely completion and return
9 of a Judicial Council form prescribed in a language other than English has the
10 same force and effect as the timely completion and return of an English language
11 form.

12 (c) The Judicial Council shall prepare a form containing ~~both~~ all of the
13 following:

14 (1) A list of each of the federal and this state's exemptions from enforcement of
15 a money judgment against a natural person.

16 (2) A citation to the relevant statute of the United States or this state which
17 creates each of the exemptions.

18 (3) Beginning with the first adjustment, pursuant to Section 703.150, of
19 exemption amounts in Article 3 (commencing with Section 704.010), a list of the
20 amounts of exemptions that have been adjusted, together with a statement of the
21 date of the next scheduled adjustment.

22 **Comment.** Paragraph (3) is added to Section 681.030(c) to implement the automatic triennial
23 cost-of-living adjustment of personal property exemptions from enforcement of money judgments
24 pursuant to Section 703.150.

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

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

27 703.130. Pursuant to the authority of ~~paragraph (1) of~~ subsection (b) of Section
28 522 of Title 11 of the United States Code, the exemptions set forth in subsection
29 (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not
30 authorized in this state.

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

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

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

37 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 dollar amount in effect under this section shall be increased in~~
5 ~~accordance with the periodic adjustments of similar exemptions provided under~~
6 ~~federal bankruptcy laws.~~

7 **Comment.** Section 703.140 is amended to delete subdivision (c), which is superseded by the
8 automatic cost-of-living adjustment provided in Section 703.150.

9 **Code Civ. Proc. § 703.150 (added). Automatic adjustment of exemption amounts**

10 SEC. 4. Section 703.150 is added to the Code of Civil Procedure, to read:

11 703.150 (a) On April 1, 2004, and at each three-year interval ending on April 1
12 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section
13 703.140 in effect immediately before that date shall be adjusted as provided in
14 subdivision (c).

15 (b) On April 1, 2007, and at each three-year interval ending on April 1
16 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing
17 with Section 704.010) in effect immediately before that date shall be adjusted as
18 provided in subdivision (c).

19 (c) The Judicial Council by rule shall determine the amount of the adjustment
20 based on the change in the annual California Consumer Price Index for All Urban
21 Consumers, published by the Department of Industrial Relations, Division of
22 Labor Statistics, for the most recent three-year period ending on December 31
23 preceding the adjustment, with each adjusted amount rounded to the nearest \$25.

24 (d) Adjustments made under subdivision (a) do not apply with respect to cases
25 commenced before the date of the adjustment, subject to any contrary rule
26 applicable under the federal Bankruptcy Code. The applicability of adjustments
27 made under subdivision (b) is governed by Section 703.050.

28 **Comment.** Section 703.150 provides a new automatic triennial cost-of-living adjustment
29 (COLA) for personal property exemptions applicable to enforcement of judgments and in
30 bankruptcy. Subdivision (a) supersedes former subdivision (c) of Section 703.140, which
31 coordinated the bankruptcy-only exemptions in Section 703.140(b) with triennial adjustments
32 under the federal Bankruptcy Code. The automatic COLA applicable to the bankruptcy-only
33 exemptions in Section 703.140(b) begins in 2004.

34 Under subdivision (b), the automatic COLA applicable to the Article 3 enforcement of
35 judgments exemptions (Sections 704.010-704.210) is deferred until 2007, because these amounts
36 are adjusted by statute operative January 1, 2004. For an exception to the adjustment provided in
37 subdivision (b), see Section 704.090(b) (inmate trust fund exemption as to crime victim's claim).

38 The triennial adjustment period under this section is the same as that provided under the
39 Bankruptcy Code. See 11 U.S.C. § 104(b)(1)(A). The \$25 rounding factor in subdivision (c) is
40 also drawn from federal law. See 11 U.S.C. § 104(b)(1)(B).

41 Subdivision (d) clarifies the application of adjusted exemption amounts. As to bankruptcy, the
42 rule is the same as provided by 11 U.S.C. § 104(c). The rule as to adjusted exemption amounts in
43 state enforcement of judgment proceedings is consistent with the general rule under this title.

44 See also Section 681.030(c)(3) (Judicial Council form to include amount of Article 3
45 exemptions and indicate next date of adjustment).

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

2 SEC. 5. Section 704.010 of the Code of Civil Procedure is amended to read:

3 704.010. (a) Any combination of the following is exempt in the amount of ~~one~~
4 ~~thousand nine hundred dollars (\$1,900)~~ two thousand three hundred dollars
5 (\$2,300):

6 (1) The aggregate equity in motor vehicles.

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

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

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

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

16 (d) If the judgment debtor has only one motor vehicle and it is sold at an
17 execution sale, the proceeds of the execution sale are exempt in the amount of ~~one~~
18 ~~thousand nine hundred dollars (\$1,900)~~ two thousand three hundred dollars
19 (\$2,300) without making a claim. The levying officer shall consult and may rely
20 upon the records of the Department of Motor Vehicles in determining whether the
21 judgment debtor has only one motor vehicle. In the case covered by this
22 subdivision, the exemption provided by subdivision (a) is not available.

23 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
24 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted
25 amounts were determined by applying the California Consumer Price Index (June 2002) for all
26 urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see
27 Section 703.150.

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

29 SEC. 6. Section 704.030 of the Code of Civil Procedure is amended to read:

30 704.030. Material that in good faith is about to be applied to the repair or
31 improvement of a residence is exempt if the equity in the material does not exceed
32 ~~two thousand dollars (\$2,000)~~ two thousand four hundred twenty-five dollars
33 (\$2,425) in the following cases:

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

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

39 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
40 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 3. Adjusted
41 amounts were determined by applying the California Consumer Price Index (June 2002) for all
42 urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see
43 Section 703.150.

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

2 SEC. 7. Section 704.040 of the Code of Civil Procedure is amended to read:

3 704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the
4 aggregate equity therein does not exceed ~~five thousand dollars (\$5,000)~~ six
5 thousand twenty-five dollars (\$6,025).

6 **Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living
7 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 4. Adjusted
8 amounts were determined by applying the California Consumer Price Index (June 2002) for all
9 urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see
10 Section 703.150.

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

13 SEC. 8. Section 704.060 of the Code of Civil Procedure is amended to read:

14 704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings,
15 books, equipment, one commercial motor vehicle, one vessel, and other personal
16 property are exempt to the extent that the aggregate equity therein does not
17 exceed:

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

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

26 (3) ~~Ten thousand dollars (\$10,000)~~ Twelve thousand fifty dollars (\$12,050), if
27 reasonably necessary to and actually used by the judgment debtor and by the
28 spouse of the judgment debtor in the exercise of the same trade, business, or
29 profession by which both earn a livelihood. In the case covered by this paragraph,
30 the exemptions provided in paragraphs (1) and (2) are not available.

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

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

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

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

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

7 **Comment.** Section 704.060 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, § 5. 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, except that the amounts in subdivisions (a)(3)
11 and (d)(2) are determined by doubling the amounts in subdivisions (a)(1)-(2) and (d)(1),
12 respectively.

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

15 SEC. 9. Section 704.080 of the Code of Civil Procedure is amended to read:

16 704.080. (a) For the purposes of this section:

17 (1) “Deposit account” means a deposit account in which payments of public
18 benefits or social security benefits are directly deposited by the government or its
19 agent.

20 (2) “Social security benefits” means payments authorized by the Social Security
21 Administration for regular retirement and survivors’ benefits, supplemental
22 security income benefits, coal miners’ health benefits, and disability insurance
23 benefits. “Public benefits” means aid payments authorized pursuant to subdivision
24 (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive
25 services as described in Section 11323.2 of the Welfare and Institutions Code, and
26 general assistance payments made pursuant to Section 17000.5 of the Welfare and
27 Institutions Code.

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

30 (1) ~~One thousand dollars (\$1,000)~~ One thousand two hundred dollars (\$1,200)
31 where one depositor is the designated payee of the directly deposited public
32 benefits payments, and ~~two thousand dollars (\$2,000)~~ two thousand four hundred
33 twenty-five dollars (\$2,425) where one depositor is the designated payee of
34 directly deposited social security payments.

35 (2) ~~One thousand five hundred dollars (\$1,500)~~ One thousand eight hundred
36 dollars (\$1,800) where two or more depositors are the designated payees of the
37 directly deposited public benefits payments, unless those depositors are joint
38 payees of directly deposited payments that represent a benefit to only one of the
39 depositors, in which case the exempt amount is ~~one thousand dollars (\$1,000)~~.
40 Three thousand dollars (\$3,000) one thousand two hundred dollars (\$1,200). Three
41 thousand six hundred twenty-five dollars (\$3,625) where two or more depositors
42 are the designated payees of directly deposited social security payments, unless
43 those depositors are joint payees of directly deposited payments that represent a

1 benefit to only one of the depositors, in which case the exempt amount is ~~two~~
2 ~~thousand dollars (\$2,000)~~ two thousand four hundred twenty-five dollars (\$2,425).

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

6 (d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3,
7 when a deposit account is levied upon or otherwise sought to be subjected to the
8 enforcement of a money judgment, the financial institution that holds the deposit
9 account shall either place the amount that exceeds the exemption provided in
10 subdivision (b) in a suspense account or otherwise prohibit withdrawal of that
11 amount pending notification of the failure of the judgment creditor to file the
12 affidavit required by this section or the judicial determination of the exempt status
13 of the amount. Within 10 business days after the levy, the financial institution shall
14 provide the levying officer with a written notice stating (1) that the deposit account
15 is one in which payments of public benefits or social security benefits are directly
16 deposited by the government or its agent and (2) the balance of the deposit account
17 that exceeds the exemption provided by subdivision (b). Promptly upon receipt of
18 the notice, the levying officer shall serve the notice on the judgment creditor.
19 Service shall be made personally or by mail.

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

23 (1) Within five days after the levying officer serves the notice on the judgment
24 creditor under subdivision (d), a judgment creditor who desires to claim that the
25 amount is not exempt shall file with the court an affidavit alleging that the amount
26 is not exempt and file a copy with the levying officer. The affidavit shall be in the
27 form of the notice of opposition provided by Section 703.560, and a hearing shall
28 be set and held, and notice given, as provided by Sections 703.570 and 703.580.
29 For the purpose of this subdivision, the “notice of opposition to the claim of
30 exemption” in Sections 703.570 and 703.580 means the affidavit under this
31 subdivision.

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

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

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

41 (5) At the conclusion of the hearing, the court by order shall determine whether
42 or not the amount of the deposit account is exempt pursuant to subdivision (c) in

1 whole or in part and shall make an appropriate order for its prompt disposition. No
2 findings are required in a proceeding under this subdivision.

3 (6) Upon determining the exemption claim for the deposit account under
4 subdivision (c), the court shall immediately transmit a certified copy of the order
5 of the court to the financial institution and to the levying officer. If the order
6 determines that all or part of the excess is exempt under subdivision (c), with
7 respect to the amount of the excess which is exempt, the financial institution shall
8 transfer the exempt excess from the suspense account or otherwise release any
9 restrictions on its withdrawal by the judgment debtor. The transfer or release shall
10 be effected within three business days of the receipt of the certified copy of the
11 court order by the financial institution.

12 (f) If the judgment debtor claims that a portion of the amount is exempt other
13 than pursuant to subdivision (c), the claim of exemption shall be made pursuant to
14 Article 2 (commencing with Section 703.510). If the judgment debtor also opposes
15 the judgment creditor's affidavit regarding an amount exempt pursuant to
16 subdivision (c), both exemptions shall be determined at the same hearing, provided
17 the judgment debtor has complied with Article 2 (commencing with Section
18 703.510).

19 **Comment.** Section 704.080 is amended to adjust the social security payments exemption
20 amounts for cost-of-living increases since the section was last amended in 1995. See 1995 Cal.
21 Stat. ch. 196, § 6. The public benefits exemption amounts are also adjusted for consistency with
22 the scheme enacted in 1998 of setting this exemption at 50% of the social security payments
23 exemption (subject to rounding to nearest \$25). See 1998 Cal. Stat. ch. 290, § 1. 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. For future automatic triennial adjustments, see
26 Section 703.150.

27 **Code Civ. Proc. § 704.090 (amended). Inmate's trust account**

28 SEC. 10. Section 704.090 of the Code of Civil Procedure is amended to read:

29 704.090. (a) The funds of a judgment debtor confined in a prison or facility
30 under the jurisdiction of the Department of Corrections or the Department of the
31 Youth Authority or confined in any county or city jail, road camp, industrial farm,
32 or other local correctional facility, held in trust for or to the credit of the judgment
33 debtor, in an inmate's trust account or similar account by the state, county, or city,
34 or any agency thereof, are exempt without making a claim in the amount of ~~one~~
35 ~~thousand dollars (\$1,000)~~ one thousand two hundred dollars (\$1,200). If the
36 judgment debtor is married, each spouse is entitled to a separate exemption under
37 this section or the spouses may combine their exemptions.

38 (b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or
39 order imposed pursuant to subdivision (a) of Section 13967 of the Government
40 Code, as operative on or before September 28, 1994, or Section 1203.04 of the
41 Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the
42 Penal Code, the funds held in trust for, or to the credit of, a judgment debtor
43 described in subdivision (a) are exempt in the amount of three hundred dollars

1 (\$300) without making a claim. The exemption provided in this subdivision is not
2 subject to adjustment under Section 703.150.

3 **Comment.** Subdivision (a) of Section 704.090 is amended to adjust the exemption amount for
4 cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, §
5 2. Adjusted amounts were determined by applying the California Consumer Price Index (June
6 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial
7 adjustments, see Section 703.150.

8 Subdivision (b) is amended to provide an exception to the automatic triennial adjustment for
9 this special type of exemption.

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

11 SEC. 11. Section 704.100 of the Code of Civil Procedure is amended to read:

12 704.100. (a) Unmatured life insurance policies (including endowment and
13 annuity policies), but not the loan value of such policies, are exempt without
14 making a claim.

15 (b) The aggregate loan value of unexpired life insurance policies (including
16 endowment and annuity policies) is subject to the enforcement of a money
17 judgment but is exempt in the amount of ~~eight thousand dollars (\$8,000)~~ nine
18 thousand six hundred fifty dollars (\$9,650). If the judgment debtor is married, each
19 spouse is entitled to a separate exemption under this subdivision, and the
20 exemptions of the spouses may be combined, regardless of whether the policies
21 belong to either or both spouses and regardless of whether the spouse of the
22 judgment debtor is also a judgment debtor under the judgment. The exemption
23 provided by this subdivision shall be first applied to policies other than the policy
24 before the court and then, if the exemption is not exhausted, to the policy before
25 the court.

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

29 **Comment.** Section 704.100 is amended to adjust the exemption amount for cost-of-living
30 increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 7. Adjusted
31 amounts were determined by applying the California Consumer Price Index (June 2002) for all
32 urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see
33 Section 703.150.

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

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

36 17409. There shall be exempt from the transfers and grants authorized by
37 Section 17109 and from execution on claims under Section 17403 against property
38 acquired by persons for the support of whom public moneys have been expended
39 all of the following property:

40 (a) ~~Cash to the amount of fifty dollars (\$50)~~ not exceeding one hundred dollars
41 (\$100).

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

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

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

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

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

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

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

17 No county shall withhold emergency medical or hospital care from any person
18 pending the person giving security for reimbursement to the county for the care or
19 hospitalization to be provided to the person.

20 **Comment.** Section 17409 is amended to double the amount of the exemption values, which
21 were originally set in 1945 and 1959. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. & Inst.
22 Code § 2611) (cash and personal effects); 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses,
23 insurance cash value). This section is also amended to make technical, nonsubstantive revisions.
24 In subdivision (f), the reference to May 21, 1963, is deleted because it is now unnecessary.