

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

Exemptions from Enforcement of Money  
Judgments: Second Decennial Review

December 2002

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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December 13, 2002

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

Pursuant to its statutory duty to review dollar amounts of exemptions from enforcement of judgments, the Law Revision Commission recommends adjusting personal property monetary exemptions to account for cost-of-living increases since the last review in 1995. In addition, the Commission recommends 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).

Respectfully submitted,

David Huebner  
*Chairperson*



## EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS: SECOND DECENNIAL REVIEW

The Enforcement of Judgments Law<sup>1</sup> charges the Law Revision Commission with the duty to review the dollar amount of debtors' exemptions every 10 years and to recommend any changes in amounts "that appear proper."<sup>2</sup> As a result of its second decennial review, the Commission proposes increasing the amount of personal property exemptions by approximately 20% to adjust for changes in the cost of living since the last comprehensive review. The Commission also proposes implementation of an automatic triennial cost-of-living adjustment 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. To fulfill this purpose, exemption amounts need to be adjusted periodically to reflect changes in the cost of living.

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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.

Existing law provides seven personal property exemptions that are subject to dollar limitations: motor vehicles,<sup>3</sup> residential repair materials,<sup>4</sup> jewelry, heirlooms, and works of art,<sup>5</sup> tools of a trade, business, or profession,<sup>6</sup> directly deposited Social Security and public benefit payments,<sup>7</sup> inmate trust accounts,<sup>8</sup> and life insurance and annuity loan value.<sup>9</sup> Some of these exemptions are increased in the case of marital property or indebtedness of both spouses,<sup>10</sup> but the general rule is that married persons are not entitled to increased or doubled exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property.<sup>11</sup>

Exemptions based on need or on the type of property are immune from inflation and price changes.<sup>12</sup> Exemptions in

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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).

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).

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 reflect 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).<sup>13</sup> Since that time, the average cost of living in California has increased by approximately 21%,<sup>14</sup> making revision of exempt amounts appropriate to account for inflation.

In addition, the California alternative bankruptcy-only exemptions have recently been increased for general conformity with the federal amounts and subjected to an automatic triennial cost-of-living adjustment through incorpora-

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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 August 2002 is 1.21. This factor is calculated by dividing the current statewide CPI of 186.8 by the 1995 annual average CPI of 154 (1982-84=100). See California Dept. of Industrial Relations, Div. of Labor Statistics & Research, *Consumer Price Index — California* (12/13/02), at <[http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)>, under file name <PresentCCPI.PDF>.

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*.

tion of federal law.<sup>15</sup> Thus, the alternative bankruptcy exemptions no longer need to be adjusted with respect to inflation.

To account for changes in the cost of living since 1995, and to catch up with the recent bankruptcy-only revisions, the Commission recommends amending the personal property enforcement of judgment exemptions as set out in the following table, with amounts rounded to the nearest \$25:<sup>16</sup>

Code Civ. Proc.	Type of Property	Current	x 1.21	Rounded
704.010	Motor vehicle	\$ 1,900	\$ 2,305	\$ 2,300
704.030	Home repair materials	\$ 2,000	\$ 2,426	\$ 2,425
704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 6,065	\$ 6,075
704.060(a)(1-2)	Tools of trade 1	\$ 5,000	\$ 6,065	\$ 6,075
704.060(a)(3)	Tools of trade 2*	\$10,000	\$12,130	\$12,150
704.060(d)(1)	Commercial vehicle 1	\$ 4,000	\$ 4,852	\$ 4,850
704.060(d)(2)	Commercial vehicle 2*	\$ 8,000	\$ 9,704	\$ 9,700
704.080(b)(1)	Social Security 1	\$ 2,000	\$ 2,426	\$ 2,425
704.080(b)(2)	Social Security 2	\$ 3,000	\$ 3,639	\$ 3,650
704.080(b)(1)	Public benefits 1	\$ 1,000	\$ 1,213	\$ 1,225
704.080(b)(2)	Public benefits 2	\$ 1,500	\$ 1,819	\$ 1,825
704.090(a)	Inmate trust funds	\$ 1,000	\$ 1,213	\$ 1,225
704.090(b)	Inmate trust funds limit <sup>17</sup>	\$ 300		
704.100(b)	Life insurance loan value	\$ 8,000	\$ 9,704	\$ 9,700

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

17. 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.

Two exemptions (marked with asterisks in the table) 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,<sup>18</sup> the doubling feature should be retained, rather than applying the COLA factor to the higher amount.

#### **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. For that reason, the Commission has not reviewed the current homestead exemption amount and makes no recommendation on whether that amount should be changed.<sup>19</sup>

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

The Commission's existing duty to review exemption statutes every ten years should be supplemented with an automatic triennial cost-of-living adjustment.<sup>20</sup> This will bring the enforcement of judgments personal property exemptions in line with the automatic COLA applicable to the bankruptcy-only exemptions. In addition, since a debtor filing for personal bankruptcy in California can choose between the bankruptcy-only exemptions and the enforcement of

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18. Section 704.060(a)(3).

19. 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. 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.

20. See proposed Section 703.150 *infra*.

judgment exemptions, the relative dollar relationship between the two sets of exemptions will be preserved over time.

Automatic COLA provisions relieve the Legislature of the burden of considering routine adjustments needed to preserve important protections in the face of inflation. Use of this simple and practical approach has grown in recent decades. There are many examples scattered throughout the California codes, applicable to retirement benefits,<sup>21</sup> welfare payments,<sup>22</sup> taxes,<sup>23</sup> campaign spending limits,<sup>24</sup> and a variety of other functions.<sup>25</sup>

The Commission recommends using the California All Urban Consumer Price Index<sup>26</sup> as the best single measure of cost-of-living changes affecting Californians. This index should be used to determine the appropriate adjustments of both the enforcement of judgments exemptions and the bankruptcy-only exemptions. In bankruptcy, this will result in a divergence from the similar amounts provided in the federal Bankruptcy Code. This is not significant, however, because California has opted out of the federal exemptions,<sup>27</sup> and it is preferable to maintain the relative relationship between the two sets of exemptions available in California bankruptcy filings.

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

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

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

24. Gov't Code § 82001.

25. 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).

26. See note 14 *supra*.

27. Section 703.130.

Responsibility for determining the appropriate COLA factor should be placed on the Judicial Council.<sup>28</sup> This is appropriate because the Judicial Council is responsible for rules of practice and procedure under the Enforcement of Judgments Law, as well as for preparation of exemption claim informational forms.<sup>29</sup> This responsibility would also be analogous to the role of the Judicial Conference of the United States in determining and publishing the COLA factor under the Bankruptcy Code.<sup>30</sup>

An objection to automatic adjustments of exemptions is that the applicable amount of an exemption would differ from that stated in the statute. Of course, this objection applies to any of the scores of dollar amounts provided by statute that are subject to automatic COLA provisions. In bankruptcy, the exemptions are applied in a judicial proceeding in one time-frame, facilitating easy determination of the correct exemption amounts. To address the issue in state enforcement of judgments proceedings, the Judicial Council would be required to publish a list of the personal property exemption amounts, together with the date of the next scheduled cost-of-living adjustment. The list would be served on the debtor along with a notice of levy.<sup>31</sup> This would enable parties to quickly determine the appropriate amount and be on notice of impending changes where the notice is received near the time of a scheduled adjustment. In practical terms, parties are far more likely to see the list of exempt amounts published by the Judicial Council than the statute. In addition, exemption claims ultimately are determined in court proceedings, where

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28. For an example of a section requiring that the Judicial Council compute and publish a cost of living adjustment, see Civ. Code § 1714.1(c) (parent or guardian liability for misconduct of minor).

29. See Section 681.030.

30. See 11 U.S.C. § 104.

31. See proposed amendments to Code Civ. Proc. § 700.010.

any issues concerning the correct amount of the exemption can be determined.<sup>32</sup>

Unlike bankruptcy, enforcement of a judgment may occur over a number of years, as the creditor discovers the debtor's assets and seeks to apply them to the satisfaction of the money judgment. Thus, exemptions in different amounts may be applicable in the same case. But this is no different than the situation under existing law, because the Legislature may change exemptions from time to time,<sup>33</sup> and the amount of a debtor's exemption is generally locked in when the creditor's lien attaches to the property.<sup>34</sup> Thus, a creditor's lien on specific property, claimed to be exempt, will not be affected by later increases in the exempt amount, whether by legislative action or an automatic COLA.

If the proposed law becomes operative in 2004, the automatic triennial adjustment applicable to the bankruptcy-only exemptions would coincide with the triennial COLA operative under the Bankruptcy Code, thereby maintaining consistent timing with federal law. The automatic triennial adjustment of the enforcement of judgments personal property exemptions would not take place until April 2007, because these exemptions will have been updated by statute in 2004, making a 2004 automatic adjustment redundant.

#### **Exemptions from County Aid Reimbursement**

Welfare and Institutions Code Section 17409 provides a specialized exemption for reimbursement claims against recipients of county aid.<sup>35</sup> These subsistence level exemptions

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32. See generally Sections 703.510-703.610.

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

34. See Section 703.100.

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

have not been revised since 1959,<sup>36</sup> with some exemptions remaining unchanged since 1945.<sup>37</sup>

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

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

37. See 1945 Cal. Stat. ch. 636, § 1 (cash and personal effects).



## PROPOSED LEGISLATION

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

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

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

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

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

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

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

(3) *Information on how to obtain the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.*

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

### **Code Civ. Proc. § 700.010 (amended). Notice of levy**

SEC. 2. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030 *and the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.*

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

**Comment.** Section 700.010 is amended to reflect the automatic triennial cost-of-living adjustment of personal property exemptions from enforcement of money judgments pursuant to Section 703.150.

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

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

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

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of

subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

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

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

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

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

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

(3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held

primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

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

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

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

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

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

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

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

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

(B) A veterans' benefit.

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

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

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness,

disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

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

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

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

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

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

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

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

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

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

~~(c) Each dollar amount in effect under this section shall be increased in accordance with the periodic adjustments of similar exemptions provided under federal bankruptcy laws.~~

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

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

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

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

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

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

(d) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), together with the date of the next scheduled adjustment.

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

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

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

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

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

See also Sections 681.030(c)(3) (list of exemption amounts published pursuant to subdivision (d) referenced in Judicial Council form), 700.010 (list of exemption amounts published pursuant to subdivision (d) served with notice of levy).

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

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

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

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

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

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

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

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

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

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

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

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

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

**Comment.** Section 704.030 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 3. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

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

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

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed ~~five thousand dollars (\$5,000)~~ *six thousand seventy-five dollars (\$6,075)*.

**Comment.** Section 704.040 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 4. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

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

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

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are

exempt to the extent that the aggregate equity therein does not exceed:

(1) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) ~~Ten thousand dollars (\$10,000)~~ *Twice the amount of the exemption provided in paragraph (1)*, if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

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

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

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

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to ~~four thousand dollars (\$4,000)~~ *four thousand eight hundred fifty dollars (\$4,850)*.

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to ~~eight thousand dollars (\$8,000)~~ *twice the amount of the exemption provided by paragraph (1) of this subdivision*.

**Comment.** Section 704.060 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 5. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25, except that the amounts in subdivisions (a)(3) and (d)(2) are determined by doubling the amounts in subdivisions (a)(1) and (d)(1), respectively.

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

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

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

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

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

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

(1) ~~One thousand dollars (\$1,000)~~ *One thousand two hundred twenty-five dollars (\$1,225)* where one depositor is the designated payee of the directly deposited public benefits payments, ~~and two thousand dollars (\$2,000)~~.

(2) *Two thousand four hundred twenty-five dollars (\$2,425)* where one depositor is the designated payee of directly deposited social security payments.

~~(2) (3) One thousand five hundred dollars (\$1,500)~~ *One thousand eight hundred twenty-five dollars (\$1,825)* where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the ~~exempt amount is one thousand dollars (\$1,000)~~. ~~Three thousand dollars (\$3,000)~~ *exemption under paragraph (1) applies.*

(4) *Three thousand six hundred fifty dollars (\$3,650)* where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the ~~exempt amount is two thousand dollars (\$2,000)~~ *exemption under paragraph (2) applies.*

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

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the

exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

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

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

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

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

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

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

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

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

**Comment.** Section 704.080 is amended to adjust the social security payments exemption amounts for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 6. The

public benefits exemption amounts are also adjusted for consistency with the scheme enacted in 1998 of setting this exemption at 50% of the social security payments exemption (subject to rounding to nearest \$25). See 1998 Cal. Stat. ch. 290, § 1. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

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

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

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of ~~one thousand dollars (\$1,000)~~ *one thousand two hundred twenty-five dollars (\$1,225)*. If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars (\$300) without making a claim. *The exemption provided in this subdivision is not subject to adjustment under Section 703.150.*

**Comment.** Subdivision (a) of Section 704.090 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted amounts

were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

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

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

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

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

(b) The aggregate loan value of unexpired life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of ~~eight thousand dollars (\$8,000)~~ *nine thousand seven hundred dollars (\$9,700)*. If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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