

AMENDED IN SENATE MARCH 27, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 182

Introduced by Assembly Member Harman

January 27, 2003

An act to amend Sections ~~681.030~~, *700.010*, 703.140, 704.010, 704.030, 704.040, 704.060, 704.080, 704.090, and 704.100 of, and to add Section 703.150 to, the Code of Civil Procedure, and to amend Section 17409 of the Welfare and Institutions Code, relating to exempt property.

LEGISLATIVE COUNSEL'S DIGEST

AB 182, as amended, Harman. Exempt property: evaluation.

(1) Existing law sets the maximum value of various forms of real and personal property that is exempt from the enforcement of judgments in bankruptcy proceedings, as specified. Existing law further provides that certain, alternative exemptions, available at the debtor's option, shall be increased in accordance with periodic adjustments of similar exemptions provided under federal bankruptcy laws.

This bill would delete the latter provision for periodic adjustments of certain exempt property, and, instead, would ~~provide for~~ *require* the Judicial Council, ~~by rule of court~~, to determine on *or before* April 1, 2004, and at each 3-year interval ending on April 1 thereafter, ~~and~~ to adjust, the amount of the exemptions applicable to that exempt property based on the change in the annual California Consumer Price Index for All Urban Consumers, and to prepare conforming forms for those adjustments. The bill would also *make conforming changes, and*

increase the statutory value of various forms of real and personal property that are exempt under alternative provisions.

(2) Existing law sets the value of various forms of real and personal property exempt from provisions governing transfers and grants, and provisions governing execution on claims, with respect to property acquired by persons for the support of whom public moneys have been expended, as specified.

This bill would increase the statutory value of specified forms of real and personal property that are exempt under the latter provisions *and require the Judicial Council to publish the current exemptions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

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

3 681.030. (a) The Judicial Council may provide by rule for the
4 practice and procedure in proceedings under this title.

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

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

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

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

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

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



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.

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 unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

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

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

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

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

(B) A veterans' benefit.

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

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

(E) A payment under a stock bonus, pension, 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,

1 to the extent reasonably necessary for the support of the debtor and
2 any dependent of the debtor.

3 ~~SEC. 3.~~

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

6 703.150. (a) On April 1, 2004, and at each three-year interval
7 ending on April 1 thereafter, the dollar amounts of exemptions
8 provided in subdivision (b) of Section 703.140 in effect
9 immediately before that date shall be adjusted as provided in
10 subdivision (c).

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

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

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

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

33 ~~SEC. 4.~~

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

36 704.010. (a) Any combination of the following is exempt in
37 the amount of two thousand three hundred dollars (\$2,300):

38 (1) The aggregate equity in motor vehicles.

39 (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 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.

~~SEC. 5.~~

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 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.

~~SEC. 6.~~

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 six thousand seventy-five dollars (\$6,075).

~~SEC. 7.~~

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

1 704.060. (a) Tools, implements, instruments, materials,
2 uniforms, furnishings, books, equipment, one commercial motor
3 vehicle, one vessel, and other personal property are exempt to the
4 extent that the aggregate equity therein does not exceed:

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

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

13 (3) Twice the amount of the exemption provided in paragraph
14 (1), if reasonably necessary to and actually used by the judgment
15 debtor and by the spouse of the judgment debtor in the exercise of
16 the same trade, business, or profession by which both earn a
17 livelihood. In the case covered by this paragraph, the exemptions
18 provided in paragraphs (1) and (2) are not available.

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

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

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

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

38 (2) The amount of the exemption for a commercial motor
39 vehicle under paragraph (3) of subdivision (a) is limited to twice

1 the amount of the exemption provided in paragraph (1) of this
2 subdivision.

3 ~~SEC. 8.~~

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

6 704.080. (a) For the purposes of this section:

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

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

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

22 (1) One thousand two hundred twenty-five dollars (\$1,225)
23 where one depositor is the designated payee of the directly
24 deposited public benefits payments.

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

28 (3) One thousand eight hundred twenty-five dollars (\$1,825)
29 where two or more depositors are the designated payees of the
30 directly deposited public benefits payments, unless those
31 depositors are joint payees of directly deposited payments that
32 represent a benefit to only one of the depositors, in which case the
33 exemption under paragraph (1) applies.

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

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

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

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

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

36 (2) If the judgment creditor does not file the affidavit with the
37 levying officer and give notice of hearing pursuant to Section
38 703.570 within the time provided in paragraph (1), the levying
39 officer shall release the deposit account and shall notify the
40 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).

~~SEC. 9.~~

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

1 making a claim in the amount of one thousand two hundred
2 twenty-five dollars (\$1,225). If the judgment debtor is married,
3 each spouse is entitled to a separate exemption under this section
4 or the spouses may combine their exemptions.

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

15 ~~SEC. 10.~~

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

18 704.100. (a) Unmatured life insurance policies (including
19 endowment and annuity policies), but not the loan value of such
20 policies, are exempt without making a claim.

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

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

37 ~~SEC. 11.~~

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

1 17409. There shall be exempt from the transfers and grants
2 authorized by Section 17109 and from execution on claims under
3 Section 17403 against property acquired by persons for the
4 support of whom public moneys have been expended all of the
5 following property:

6 (a) Cash not exceeding one hundred dollars (\$100).

7 (b) Personal effects and household furniture not exceeding one
8 thousand dollars (\$1,000) in value.

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

11 (d) Funds placed in trust for funeral or burial expenses not
12 exceeding one thousand dollars (\$1,000).

13 (e) Insurance policies having an actual cash surrender value not
14 exceeding one thousand dollars (\$1,000).

15 (f) Real or personal property of a recipient of public assistance,
16 with respect to aid or county hospital care.

17 (g) For a period of six months from the date of receipt, the
18 compensation received from a public entity which acquires for a
19 public use a dwelling actually owned and occupied by the
20 recipient. Such compensation shall be exempt in the amount, over
21 and above all liens and encumbrances, provided by Section
22 704.730 of the Code of Civil Procedure.

23 (h) Relocation benefits shall be exempt as provided by Section
24 704.180 of the Code of Civil Procedure.

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