

ASSEMBLY BILL

No. 1046

Introduced by Assembly Member Anderson

February 27, 2009

An act to amend Sections 703.150 and 704.730 of the Code of Civil Procedure, relating to enforcement of judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1046, as introduced, Anderson. Enforcement of judgments: exemptions: homesteads.

Existing law provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt. Existing law provides a base exemption of \$50,000, an exemption of \$75,000 if the judgment debtor or his or her spouse who resides in the homestead is, at the time of the sale, a member of a family unit, and one member of the family unit is without an interest, or with only a limited interest, as specified, in the homestead, and an exemption of \$150,000 if the judgment debtor or the spouse of the judgment debtor who resides in the homestead is, at the time of the sale, 65 years of age or older, disabled, or 55 years of age or older with a limited income, as specified.

Existing law requires the Judicial Council to adjust specified exemptions from execution at 3-year intervals based on the change in the annual California Consumer Price Index for All Urban Consumers, and to publish a list of the current dollar amounts of those exemptions, as specified.

This bill would increase the homestead exemptions described above to \$75,000, \$100,000, and \$175,000, respectively. The bill would require the Judicial Council to determine, on or before April 1, 2010, and at each 3-year interval ending on April 1 thereafter, to submit to the

Legislature the amount by which the dollar amounts of the exemptions applicable to that exempt property may be increased based on the change in the annual California Consumer Price Index for All Urban Consumers. The bill would provide that those increases shall not take effect unless they are approved by the Legislature. The bill would require the Judicial Council to publish a list of the current dollar amounts of those exemptions.

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

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

1 SECTION 1. Section 703.150 of the Code of Civil Procedure
2 is amended to read:
3 703.150. (a) On April 1, 2004, and at each three-year interval
4 ending on April 1 thereafter, the dollar amounts of exemptions
5 provided in subdivision (b) of Section 703.140 in effect
6 immediately before that date shall be adjusted as provided in
7 subdivision-~~(e)~~ (d).
8 (b) On April 1, 2007, and at each three-year interval ending on
9 April 1 thereafter, the dollar amounts of exemptions provided in
10 Article 3 (commencing with Section 704.010) in effect immediately
11 before that date shall be adjusted as provided in subdivision-~~(e)~~
12 (d).
13 (c) *On April 1, 2010, and at each three-year interval ending on*
14 *April 1 thereafter, the Judicial Council shall submit to the*
15 *Legislature the amount by which the dollar amounts of exemptions*
16 *provided in subdivision (a) of Section 704.730 in effect immediately*
17 *before that date may be increased as provided in subdivision (d).*
18 *Those increases shall not take effect unless they are approved by*
19 *the Legislature.*
20 ~~(e)~~
21 (d) The Judicial Council shall determine the amount of the
22 adjustment based on the change in the annual California Consumer
23 Price Index for All Urban Consumers, published by the Department
24 of Industrial Relations, Division of Labor Statistics, for the most
25 recent three-year period ending on December 31 preceding the
26 adjustment, with each adjusted amount rounded to the nearest
27 twenty-five dollars (\$25).
28 ~~(d)~~

(e) 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. *In any year that the Legislature votes to increase the exemptions provided in subdivision (a) of Section 704.730, the Judicial Council shall publish a list of current dollar amounts of exemptions.*

(e)
(f) 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)~~ subdivisions (b) and (c) is governed by Section 703.050.

SEC. 2. Section 704.730 of the Code of Civil Procedure is amended to read:

704.730. (a) The amount of the homestead exemption is one of the following:

(1) ~~Fifty-Seventy-five thousand dollars—(\$50,000)~~ (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) ~~Seventy-five—One hundred thousand dollars—(\$75,000)~~ (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) ~~One hundred-fifty seventy-five thousand dollars—(\$150,000)~~ (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the

1 requirements of this paragraph as to his or her inability to engage
2 in substantial gainful employment.

3 (C) A person 55 years of age or older with a gross annual income
4 of not more than fifteen thousand dollars (\$15,000) or, if the
5 judgment debtor is married, a gross annual income, including the
6 gross annual income of the judgment debtor's spouse, of not more
7 than twenty thousand dollars (\$20,000) and the sale is an
8 involuntary sale.

9 (b) Notwithstanding any other provision of this section, the
10 combined homestead exemptions of spouses on the same judgment
11 shall not exceed the amount specified in paragraph (2) or (3),
12 whichever is applicable, of subdivision (a), regardless of whether
13 the spouses are jointly obligated on the judgment and regardless
14 of whether the homestead consists of community or separate
15 property or both. Notwithstanding any other provision of this
16 article, if both spouses are entitled to a homestead exemption, the
17 exemption of proceeds of the homestead shall be apportioned
18 between the spouses on the basis of their proportionate interests
19 in the homestead.