

AMENDED IN SENATE AUGUST 23, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE AUGUST 31, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 929

Introduced by Assembly Member Wieckowski

February 18, 2011

An act to amend Sections 703.140, 703.150, and 704.730 of the Code of Civil Procedure, relating to debtor exemptions.

LEGISLATIVE COUNSEL'S DIGEST

AB 929, as amended, Wieckowski. Debtor exemptions: bankruptcy.

Existing law identifies property of a debtor that is exempt from all procedures for enforcement of a money judgment. Under existing law, those exemptions are available to a debtor in a federal bankruptcy case, whether a money judgment is being enforced by execution sale or other procedure, unless the debtor elects certain alternative exemptions. Existing law also provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt, and sets forth the amounts of the homestead exemptions available under specified circumstances. Existing law requires the Judicial Council to, every 3 years, adjust the amount of the exemptions described above based on the change in the annual California Consumer Price Index for All Urban Consumers, as specified.

This bill would increase the dollar amount of the exemptions for a debtor's interest in motor vehicles, jewelry, and implements,

professional books, or tools of the trade of the debtor or the debtor’s dependent.

This bill would, beginning April 1, ~~2016~~ 2013, and every 3 years thereafter, require the Judicial Council to submit to the Legislature the amount by which the dollar amounts of the homestead exemptions described above may be adjusted based on the change in the annual California Consumer Price Index for All Urban Consumers, as specified.

This bill would also increase the ~~amounts~~ amount of the homestead exemptions for persons 55 years of age or older who meet specified income criteria.

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 703.140 of the Code of Civil Procedure
2 is amended to read:

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

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

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

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

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

7 (1) The debtor's aggregate interest, not to exceed twenty-four
8 thousand sixty dollars (\$24,060) in value, in real property or
9 personal property that the debtor or a dependent of the debtor uses
10 as a residence, in a cooperative that owns property that the debtor
11 or a dependent of the debtor uses as a residence.

12 (2) The debtor's interest, not to exceed four thousand eight
13 hundred dollars (\$4,800) in value, in one or more motor vehicles.

14 (3) The debtor's interest, not to exceed six hundred dollars
15 (\$600) in value in any particular item, in household furnishings,
16 household goods, wearing apparel, appliances, books, animals,
17 crops, or musical instruments, that are held primarily for the
18 personal, family, or household use of the debtor or a dependent of
19 the debtor.

20 (4) The debtor's aggregate interest, not to exceed one thousand
21 four hundred twenty-five dollars (\$1,425) in value, in jewelry held
22 primarily for the personal, family, or household use of the debtor
23 or a dependent of the debtor.

24 (5) The debtor's aggregate interest, not to exceed in value one
25 thousand two hundred eighty dollars (\$1,280) plus any unused
26 amount of the exemption provided under paragraph (1), in any
27 property.

28 (6) The debtor's aggregate interest, not to exceed seven thousand
29 one hundred seventy-five dollars (\$7,175) in value, in any
30 implements, professional books, or tools of the trade of the debtor
31 or the trade of a dependent of the debtor.

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

34 (8) The debtor's aggregate interest, not to exceed in value twelve
35 thousand eight hundred sixty dollars (\$12,860), in any accrued
36 dividend or interest under, or loan value of, any unmaturred life
37 insurance contract owned by the debtor under which the insured
38 is the debtor or an individual of whom the debtor is a dependent.

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

- 1 (10) The debtor’s right to receive any of the following:
- 2 (A) A social security benefit, unemployment compensation, or
- 3 a local public assistance benefit.
- 4 (B) A veterans’ benefit.
- 5 (C) A disability, illness, or unemployment benefit.
- 6 (D) Alimony, support, or separate maintenance, to the extent
- 7 reasonably necessary for the support of the debtor and any
- 8 dependent of the debtor.
- 9 (E) A payment under a stock bonus, pension, profit-sharing,
- 10 annuity, or similar plan or contract on account of illness, disability,
- 11 death, age, or length of service, to the extent reasonably necessary
- 12 for the support of the debtor and any dependent of the debtor,
- 13 unless all of the following apply:
- 14 (i) That plan or contract was established by or under the auspices
- 15 of an insider that employed the debtor at the time the debtor’s
- 16 rights under the plan or contract arose.
- 17 (ii) The payment is on account of age or length of service.
- 18 (iii) That plan or contract does not qualify under Section 401(a),
- 19 403(a), 403(b), 408, or 408A of the Internal Revenue Code of
- 20 1986.
- 21 (11) The debtor’s right to receive, or property that is traceable
- 22 to, any of the following:
- 23 (A) An award under a crime victim’s reparation law.
- 24 (B) A payment on account of the wrongful death of an individual
- 25 of whom the debtor was a dependent, to the extent reasonably
- 26 necessary for the support of the debtor and any dependent of the
- 27 debtor.
- 28 (C) A payment under a life insurance contract that insured the
- 29 life of an individual of whom the debtor was a dependent on the
- 30 date of that individual’s death, to the extent reasonably necessary
- 31 for the support of the debtor and any dependent of the debtor.
- 32 (D) A payment, not to exceed twenty-four thousand sixty dollars
- 33 (\$24,060), on account of personal bodily injury of the debtor or
- 34 an individual of whom the debtor is a dependent.
- 35 (E) A payment in compensation of loss of future earnings of
- 36 the debtor or an individual of whom the debtor is or was a
- 37 dependent, to the extent reasonably necessary for the support of
- 38 the debtor and any dependent of the debtor.
- 39 SEC. 2. Section 703.150 of the Code of Civil Procedure is
- 40 amended to read:

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

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

10 (c) On April 1, ~~2016~~ 2013, and at each three-year interval ending
11 on April 1 thereafter, the Judicial Council shall submit to the
12 Legislature the amount by which the dollar amounts of exemptions
13 provided in subdivision (a) of Section 704.730 in effect
14 immediately before that date may be increased as provided in
15 subdivision (d). Those increases shall not take effect unless they
16 are approved by the Legislature.

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

24 (e) Beginning April 1, 2004, the Judicial Council shall publish
25 a list of the current dollar amounts of exemptions provided in
26 subdivision (b) of Section 703.140 and in Article 3 (commencing
27 with Section 704.010), together with the date of the next scheduled
28 adjustment. In any year that the Legislature votes to increase the
29 exemptions provided in subdivision (a) of Section 704.730, the
30 Judicial Council shall publish a list of current dollar amounts of
31 exemptions.

32 (f) Adjustments made under subdivision (a) do not apply with
33 respect to cases commenced before the date of the adjustment,
34 subject to any contrary rule applicable under the federal Bankruptcy
35 Code. The applicability of adjustments made under subdivisions
36 (b) and (c) is governed by Section 703.050.

37 SEC. 3. Section 704.730 of the Code of Civil Procedure is
38 amended to read:

39 704.730. (a) The amount of the homestead exemption is one
40 of the following:

1 (1) ~~One hundred fifty thousand dollars (\$150,000)~~ *Seventy-five*
 2 *thousand dollars (\$75,000)* unless the judgment debtor or spouse
 3 of the judgment debtor who resides in the homestead is a person
 4 described in paragraph (2) or (3).

5 (2) ~~Two hundred fifty thousand dollars (\$250,000)~~ *One hundred*
 6 *thousand dollars (\$100,000)* if the judgment debtor or spouse of
 7 the judgment debtor who resides in the homestead is at the time
 8 of the attempted sale of the homestead a member of a family unit,
 9 and there is at least one member of the family unit who owns no
 10 interest in the homestead or whose only interest in the homestead
 11 is a community property interest with the judgment debtor.

12 (3) ~~Three hundred fifty thousand dollars (\$350,000)~~ *One*
 13 *hundred seventy-five thousand dollars (\$175,000)* if the judgment
 14 debtor or spouse of the judgment debtor who resides in the
 15 homestead is at the time of the attempted sale of the homestead
 16 any one of the following:

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

18 (B) A person physically or mentally disabled who as a result of
 19 that disability is unable to engage in substantial gainful
 20 employment. There is a rebuttable presumption affecting the burden
 21 of proof that a person receiving disability insurance benefit
 22 payments under Title II or supplemental security income payments
 23 under Title XVI of the federal Social Security Act satisfies the
 24 requirements of this paragraph as to his or her inability to engage
 25 in substantial gainful employment.

26 (C) A person 55 years of age or older with a gross annual income
 27 of not more than twenty-five thousand dollars (\$25,000) or, if the
 28 judgment debtor is married, a gross annual income, including the
 29 gross annual income of the judgment debtor's spouse, of not more
 30 than thirty-five thousand dollars (\$35,000) and the sale is an
 31 involuntary sale.

32 (b) Notwithstanding any other provision of this section, the
 33 combined homestead exemptions of spouses on the same judgment
 34 shall not exceed the amount specified in paragraph (2) or (3),
 35 whichever is applicable, of subdivision (a), regardless of whether
 36 the spouses are jointly obligated on the judgment and regardless
 37 of whether the homestead consists of community or separate
 38 property or both. Notwithstanding any other provision of this
 39 article, if both spouses are entitled to a homestead exemption, the
 40 exemption of proceeds of the homestead shall be apportioned

- 1 between the spouses on the basis of their proportionate interests
- 2 in the homestead.

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