

AMENDED IN ASSEMBLY JUNE 21, 1999

AMENDED IN SENATE MAY 27, 1999

SENATE BILL

No. 469

Introduced by Senator Poochigian

February 17, 1999

An act to amend Sections 703.140 and 704.115 of the Code of Civil Procedure, relating to exempt assets.

LEGISLATIVE COUNSEL'S DIGEST

SB 469, as amended, Poochigian. Exempt assets: Roth IRAs.

Existing law provides that, among other assets, specified private retirement plans and individual retirement annuities or accounts are exempt from the enforcement of money judgments, subject to certain conditions and limitations. Existing law provides similar exemptions from the debtor's bankruptcy estate in cases under federal bankruptcy law.

This bill would specify that individual retirement accounts known as "Roth IRAs," established and qualified under specified provisions of the Internal Revenue Code of 1968, shall be subject to those exemptions.

Vote: majority. Appropriation: no. Fiscal committee: no. 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
- 2 Procedure is amended to read:

1 703.140. (a) In a case under Title 11 of the United
2 States Code, all of the exemptions provided by this
3 chapter including the homestead exemption, other than
4 the provisions of subdivision (b) are applicable regardless
5 of whether there is a money judgment against the debtor
6 or whether a money judgment is being enforced by
7 execution sale or any other procedure, but the
8 exemptions provided by subdivision (b) may be elected
9 in lieu of all other exemptions provided by this chapter,
10 as follows:

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

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

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

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

35 (1) The debtor's aggregate interest, not to exceed
36 fifteen thousand dollars (\$15,000) in value, in real
37 property or personal property that the debtor or a
38 dependent of the debtor uses as a residence, in a
39 cooperative that owns property that the debtor or a



1 dependent of the debtor uses as a residence, or in a burial
2 plot for the debtor or a dependent of the debtor.

3 (2) The debtor's interest, not to exceed two thousand
4 four hundred dollars (\$2,400) in value, in one motor
5 vehicle.

6 (3) The debtor's interest, not to exceed four hundred
7 dollars (\$400) in value in any particular item, in
8 household furnishings, household goods, wearing
9 apparel, appliances, books, animals, crops, or musical
10 instruments, that are held primarily for the personal,
11 family, or household use of the debtor or a dependent of
12 the debtor.

13 (4) The debtor's aggregate interest, not to exceed one
14 thousand dollars (\$1,000) in value, in jewelry held
15 primarily for the personal, family, or household use of the
16 debtor or a dependent of the debtor.

17 (5) The debtor's aggregate interest, not to exceed in
18 value eight hundred dollars (\$800) plus any unused
19 amount of the exemption provided under paragraph (1),
20 in any property.

21 (6) The debtor's aggregate interest, not to exceed one
22 thousand five hundred dollars (\$1,500) in value, in any
23 implements, professional books, or tools of the trade of the
24 debtor or the trade of a dependent of the debtor.

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

27 (8) The debtor's aggregate interest, not to exceed in
28 value eight thousand dollars (\$8,000) in any accrued
29 dividend or interest under, or loan value of, any
30 unmaturred life insurance contract owned by the debtor
31 under which the insured is the debtor or an individual of
32 whom the debtor is a dependent.

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

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

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

38 (B) A veterans' benefit.

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



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

4 (E) A payment under a stock bonus, pension,
5 profit-sharing, annuity, or similar plan or contract on
6 account of illness, disability, death, age, or length of
7 service, to the extent reasonably necessary for the
8 support of the debtor and any dependent of the debtor,
9 unless all of the following apply:

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

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

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

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

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

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

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

30 (D) A payment, not to exceed fifteen thousand dollars
31 (\$15,000), on account of personal bodily injury, not
32 including pain and suffering or compensation for actual
33 pecuniary loss, of the debtor or an individual of whom the
34 debtor is a dependent.

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



1 SEC. 2. Section 704.115 of the Code of Civil Procedure
2 is amended to read:

3 704.115. (a) As used in this section, “private
4 retirement plan” means:

5 (1) Private retirement plans, including, but not
6 limited to, union retirement plans.

7 (2) Profit-sharing plans designed and used for
8 retirement purposes.

9 (3) Self-employed retirement plans and individual
10 retirement annuities or accounts provided for in the
11 Internal Revenue Code of 1986, as amended, including
12 individual retirement accounts qualified under Section
13 408 or 408A of that code, to the extent the amounts held
14 in the plans, annuities, or accounts do not exceed the
15 maximum amounts exempt from federal income taxation
16 under that code.

17 (b) All amounts held, controlled, or in process of
18 distribution by a private retirement plan, for the
19 payment of benefits as an annuity, pension, retirement
20 allowance, disability payment, or death benefit from a
21 private retirement plan are exempt.

22 (c) Notwithstanding subdivision (b), where an
23 amount described in subdivision (b) becomes payable to
24 a person and is sought to be applied to the satisfaction of
25 a judgment for child, family, or spousal support against
26 that person:

27 (1) Except as provided in paragraph (2), the amount
28 is exempt only to the extent that the court determines
29 under subdivision (c) of Section 703.070.

30 (2) If the amount sought to be applied to the
31 satisfaction of the judgment is payable periodically, the
32 amount payable is subject to an earnings assignment
33 order for support as defined in Section 706.011 or any
34 other applicable enforcement procedure, but the amount
35 to be withheld pursuant to the assignment order or other
36 procedure shall not exceed the amount permitted to be
37 withheld on an earnings withholding order for support
38 under Section 706.052.

39 (d) After payment, the amounts described in
40 subdivision (b) and all contributions and interest thereon



1 returned to any member of a private retirement plan are
2 exempt.

3 (e) Notwithstanding subdivisions (b) and (d), except
4 as provided in subdivision (f), the amounts described in
5 paragraph (3) of subdivision (a) are exempt only to the
6 extent necessary to provide for the support of the
7 judgment debtor when the judgment debtor retires and
8 for the support of the spouse and dependents of the
9 judgment debtor, taking into account all resources that
10 are likely to be available for the support of the judgment
11 debtor when the judgment debtor retires. In
12 determining the amount to be exempt under this
13 subdivision, the court shall allow the judgment debtor
14 such additional amount as is necessary to pay any federal
15 and state income taxes payable as a result of the applying
16 of an amount described in paragraph (3) of subdivision
17 (a) to the satisfaction of the money judgment.

18 (f) Where the amounts described in paragraph (3) of
19 subdivision (a) are payable periodically, the amount of
20 ~~such~~ *the* periodic payment that may be applied to the
21 satisfaction of a money judgment is the amount that may
22 be withheld from a like amount of earnings under
23 Chapter 5 (commencing with Section 706.010) (Wage
24 Garnishment Law). To the extent a lump sum
25 distribution from an individual retirement account is
26 treated differently from a periodic distribution under this
27 subdivision, any lump *sum* distribution from an account
28 qualified under Section 408A of the Internal Revenue
29 Code shall be treated the same as a lump sum distribution
30 from an account qualified under Section 408 of the
31 Internal Revenue Code for purposes of determining
32 whether any of that payment may be applied to the
33 satisfaction of a money judgment.

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