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SB-898 Enforcement of judgments: exemptions. (2019-2020)

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Senate Bill No. 898

CHAPTER 81

An act to amend Sections 703.140, 704.010, 704.030, 704.040, 704.060, 704.080, 704.090, and 704.100 of, and to add Section 704.105 to, the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 11, 2020. Filed with Secretary of State September 11, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 898, Wieckowski. Enforcement of judgments: exemptions.

Existing law identifies various types of property of a judgment debtor that are exempt from the enforcement of a money judgment. Existing law provides that property described in statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure, and property described in statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment. These general 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 that are applicable only in the bankruptcy case.

Existing law requires the Judicial Council to, every 3 years, adjust the amount of the exemptions applicable to exempt property based on the change in the annual California Consumer Price Index for All Urban Consumers.

Existing law, the Golden State Scholarshare Trust Act, establishes the Golden State Scholarshare College Savings Trust for the purpose of administering funds contributed by participants as a means of paying for postsecondary education costs.

This bill would increase the statutory amounts of various exemptions to reflect the amounts of the exemptions as adjusted by the Judicial Council effective April 1, 2019. The bill would provide that money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act is exempt for the purposes described above, subject to specified limits.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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 spouses 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 spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both of the spouses 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 twenty-nine thousand two hundred seventy five dollars (\$29,275) 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.

(2) The debtor's interest, not to exceed five thousand eight hundred fifty dollars (\$5,850) in value, in one or more motor vehicles.

(3) The debtor's interest, not to exceed seven hundred twenty-five dollars (\$725) 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 seven hundred fifty dollars (\$1,750) 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 one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed eight thousand seven hundred twenty five dollars (\$8,725) 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 fifteen thousand six hundred fifty dollars (\$15,650) in value, 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 twenty-nine thousand two hundred seventy-five dollars (\$29,275) on account of personal bodily injury 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.

(12) Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), subject to the following limits:

(A) The amount exempted for contributions to an account during the 365-day period prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.

(B) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.

(C) For the purposes of this paragraph, "account" includes all accounts having the same beneficiary.

SEC. 2. 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 three thousand three hundred twenty-five dollars (\$3,325):

(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 three thousand three hundred twenty-five dollars (\$3,325) 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. 3. 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 three thousand five hundred dollars (\$3,500) 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. 4. 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 eight thousand seven hundred twenty-five dollars (\$8,725).

SEC. 5. 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) Eight thousand seven hundred twenty-five dollars (\$8,725,) 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) Eight thousand seven hundred twenty-five dollars (\$8,725), 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) 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 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 twice the amount of the exemption provided in paragraph (1) of this subdivision.

SEC. 6. 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 seven hundred fifty dollars (\$1,750) where one depositor is the designated payee of the directly deposited public benefits payments.

(2) Three thousand five hundred dollars (\$3,500) where one depositor is the designated payee of directly deposited social security payments.

(3) Two thousand six hundred dollars (\$2,600) 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 exemption under paragraph (1) applies.

(4) Five thousand two hundred fifty dollars (\$5,250) 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 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).

SEC. 7. 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 seven hundred fifty dollars (\$1,750). 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 twenty-five dollars (\$325) without making a claim. The exemption provided in this subdivision is not subject to adjustment under Section 703.150.

SEC. 8. 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 unmatured life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of thirteen thousand nine hundred seventy-five dollars (\$13,975). 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.

SEC. 9. Section 704.105 is added to the Code of Civil Procedure, to read:

704.105. Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code) is exempt without making a claim, subject to the following limitations:

(a) The amount exempted for contributions to an account during the 365-day period prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.

(b) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.

(c) For the purposes of this section, "account" includes all accounts having the same beneficiary.