

ANALYSIS OF AMENDED BILL

Author: Anderson, et al. Analyst: Matthew Cooling Bill Number: AB 1046

Related Bills: See Legislative History Telephone: 845-5983 Introduced and Amended Dates: February 27, 2009 & July 1, 2009

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Homestead Exemption Increase/Judicial Council

SUMMARY

This bill would require the Judicial Council to calculate the amount of homestead exemption increases, require the Legislature's approval on the increased amounts, and increase the homestead exemption amounts, as specified.

SUMMARY OF AMENDMENTS

The July 1, 2009, amendments made a technical non-substantive change related to the eligibility of receiving a homestead exemption of \$175,000, as specified. In addition, these amendments added coauthors.

This is the department's first analysis of this bill.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to adjust the homestead exemption amount under the Code of Civil Procedure to allow greater protection for debtors' homes from creditors.

EFFECTIVE/OPERATIVE DATE

Assuming enactment in 2009, this bill would become effective on January 1, 2010, and operative as of that date.

POSITION

Pending.

Board Position:	Department Director	Date
_____ S		
_____ SA		
_____ N		
_____ NA		
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_____ OUA		
_____ NP		
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_____ X PENDING	Selvi Stanislaus	07/27/09

ANALYSIS

STATE LAW

Existing state law allows certain equity in a property to be exempt from collection of money judgments under Code of Civil Procedure section 703.010. State law also requires periodic adjustments to the dollar amounts of certain exemptions provided under the Code of Civil Procedure.

Current law requires the Judicial Council to determine the adjusted exemption amount for exemptions provided in the Code of Civil Procedure sections 703.140(b) and 704.010 based on the California Consumer Price Index (CCPI) for All Urban Consumers. The Judicial Council is further required to publish a list of the current dollar amounts of the exemptions provided by those sections.

In addition, for the purposes of collecting tax debts, Revenue and Taxation Code section 21017 requires the Franchise Tax Board (FTB) to adjust the exemption amounts under the Code of Civil Procedure section 703.010,¹ based on the change in the CCPI if the change would result in greater than a five percent increase over any previous adjustment.

Current state law provides a homestead exemption under the Code of Civil Procedure section 704.730. If a homestead is for sale to collect a debt, the exemption from the amount collected is \$75,000 if the following also apply:

- The judgment debtor or spouse is a member of a family unit, and
- There is at least one member of the family unit who has no ownership interest in the homestead or whose only interest is a community property interest with the judgment debtor.

If a homestead is for sale to collect a debt, the exemption from the amount collected is \$150,000 if the one of following also apply:

- A person is 65 years of age or older,
- A person is physically or mentally disabled and cannot work, or
- A person is 55 years of age or older with a gross annual income of \$15,000 or less (\$20,000 or less for married filing joint).

THIS BILL

Beginning on April 1, 2010, and on each succeeding three-year period ending on April 1, this bill would require the Judicial Council to determine the adjusted exemption amount, for those exemptions provided in the Code of Civil Procedure section 704.730 based on the CCPI. The Judicial Council would also be required to submit these proposed exemption dollar amounts to the Legislature for approval. In any year that the Legislature votes to increase the exemptions under the Code of Civil Procedure section 704.730, the Judicial Council would be required to publish a list of current dollar amounts of exemptions.

¹ CCP section 703.010(a) states that the exemptions provided by this chapter, or by any other statute, apply to all procedures for enforcement of a money judgment.

This bill would also increase the homestead exemption amounts under the Code of Civil Procedure section 704.730. The homestead exemption amounts would increase from \$75,000 or \$150,000 to \$100,000 and \$175,000, respectively.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 680 (Hall, 2009/2010) would make several requirements to the way levies are collected under the Code of Civil Procedure and the Government Code. This bill is currently in the Senate Judiciary Committee.

AB 2878 (Anderson, 2007/2008) was identical to this bill, and thus would have provided the same increase to the homestead exclusion. This bill was vetoed by Governor Schwarzenegger. Please see Appendix A for the veto message.

OTHER STATES' INFORMATION

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York* due to their similarities to California's economy, business entity types, and tax laws.

Illinois offers a homestead exemption from money judgments.

Minnesota allows exemptions from money judgments for certain personal properties, but not for homesteads.

Florida, Massachusetts, Michigan, and New York do not allow exemptions comparable to the one proposed by this bill.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Discussion

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Matthew Cooling
(916) 845-5983
matthew.cooling@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521
patrice.gau-johnson@ftb.ca.gov

Appendix A

BILL NUMBER: AB 2878
VETOED DATE: 09/27/2008

To the Members of the California State Assembly:

I am returning Assembly Bill 2878 without my signature.

The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

Sincerely,

Arnold Schwarzenegger