



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 15, 2019

Title

Rules and Forms: Civil Practice and
Procedure: Adjustments to Dollar Amounts
of Exemptions and Civil Penalty

Rules, Forms, Standards, or Statutes Affected

Adopt Appendix H of Cal. Rules of Court;
revise form EJ-156

Recommended by

Judicial Council staff
Susan McMullan, Supervising Attorney
Legal Services

Agenda Item Type

Action Required

Effective Date

April 1, 2019

Date of Report

February 26, 2019

Contact

Anne M. Ronan, 415-865-8933
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Executive Summary

Judicial Council staff recommend that the Judicial Council take three actions required by statute to reflect changes in the California Consumer Price Index: (1) adopt Appendix H of the California Rules of Court, which sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6, as required by Health and Safety Code section 25249.7(k)(2)(B)(ii); (2) revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which includes the three-year adjustments to the dollar amounts of certain exemptions from judgments required by Code of Civil Procedure sections 703.150(a), (b), (d) and (e); and (3) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

Recommendations

Judicial Council staff recommend that the Judicial Council take the following actions:

1. Adopt Appendix H of the California Rules of Court, effective April 1, 2019, which contains the revised amount of a civil penalty described in Health and Safety Code section 25249.7(k) adjusted to reflect changes in the Consumer Price Index;
2. Revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), effective April 1, 2019, which contains revised figures adjusted to reflect changes in the Consumer Price Index;
3. Approve, effective March 30, 2019, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and
4. Direct Judicial Council staff to submit the report to the Legislature.

Appendix H is at page 5, the revised form is at page 6, and the report is at page 9.

Relevant Previous Council Action

In 2004, the Judicial Council authorized the Administrative Office of the Courts¹ to prepare a list of the amounts of certain exemptions from enforcement of judgments and to periodically update the list as required by Code of Civil Procedure² section 703.150(d) and (e) to reflect changes in the California Consumer Price Index for All Urban Consumers (CCPI). Pursuant to this authorization, a list entitled *Current Dollar Amounts of Exemptions From Enforcement of Judgments* was prepared and posted on the California Courts website in April 2004. The list contained the dollar amounts of exemptions effective as of April 1, 2004, and indicated that further adjustments would be made every three years. As statutorily mandated, the exemption amounts on the list were adjusted in 2007, 2010, 2013, and 2016. The council, rather than the Administrative Director, began approving the revisions to the form in 2013.

The requirement that the council report on potential adjustments to the homestead exemption based on changes in the CCPI (see § 703.150(c)) is a more recent addition to that statute. This is the third report to the Legislature prepared under that provision.

The requirement that the council adjust the amount of the civil penalty under Health and Safety Code section 25249.7 every five years to reflect changes in the CCPI was enacted as part of Proposition 65 in 2012. This is the first time that adjustment has been made.

Analysis/Rationale

Civil penalty under Proposition 65

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any

¹ See Judicial Council of Cal., Advisory Com. Rep., *Exemptions From the Enforcement of Judgments* (April 12, 2004) and minutes of the April 23, 2004, Judicial Council meeting, item 1, www.courts.ca.gov/documents/age0404.pdf.

² Unless otherwise noted, all statutory references hereafter are to the Code of Civil Procedure.

individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from knowingly discharging or releasing such a chemical into water or any source of drinking water, except as specified. A person may bring an action in the public interest for violation of the act, but only after certain notices have been provided to the alleged violator and to the Attorney General. In 2013, the Legislature amended the statute to require that, when the alleged violations were based on failure to provide certain warnings, a private exemption action is prohibited if the alleged violator, within 14 days after receiving the required notice, corrects the alleged violation and pays a civil penalty in the amount of \$500 per facility or premises. (See Health & Saf. Code, § 25249.7(k).) At the same time, the Legislature mandated that the Judicial Council adjust the amount of that civil penalty every five years, beginning April 1, 2019, based on changes to the CCPI over the prior five years. (Health & Saf. Code, § 25249.7(k)(2)(B)(ii).)

Based on the recently published 2018 CCPI figure,³ as set out in the formula in proposed Appendix H to the California Rules of Court attached to this report, the adjusted dollar amount of the exemptions that will be effective on April 1, 2019, is \$565. Including this calculation and figure in an appendix to the rules of court will make it easily available to members of the public.⁴

Exemptions to enforcement of judgments

Section 703.150(e) requires the Judicial Council to adjust the dollar amounts of several exemptions from the enforcement of judgment provided in sections 703.140(b) (for cases under title 11 of the United States Code) and 704.010 et seq. (for other cases) every three years based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(a), (b).) The list of the dollar amounts of exemptions needs to be adjusted again at this time.

Based on the recently published 2018 figures and using the formula attached to this report, staff have calculated the adjusted dollar amounts of the exemptions effective April 1, 2016, and revised the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156) to show the adjusted amounts.

In 2010, the Legislature amended the provisions on exemptions to address potential adjustments to the dollar amount of homestead exemptions provided in section 704.730(a). (See § 703.150(c).) The council is not to make these adjustments, but only to calculate what they would be under the same formula used for adjusting the other exemptions (i.e., based on the change in the CCPI over the past three years) and to provide that information to the Legislature,

³ The California Department of Labor has published the figures on its website, at www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF.

⁴ The text of proposed Appendix H parallels Appendix B to the rules of court. Appendix B reflects similar adjustments based on changes in the CCPI that the council is required to make every two years to the amount of civil liability a parent or guardian may have for the torts of a minor. Because Appendix B must be revised every other July 1, while Appendix H must be revised every fifth April 1, it did not make sense to include both in a single appendix.

beginning on April 1, 2013, and at three-year intervals thereafter. (*Ibid.*) The attached recommended report to the Legislature provides this information, along with a copy of the formula used to generate it.

Policy implications

There are no policy implications to these recommendations; they are simply actions required by statute.

Comments

This proposal was not circulated for comment because the changes to the civil penalty and the exemption amounts are technical, required by statute, and not subject to discretion.

Alternatives considered

No alternatives to the new Appendix H or the revised form EJ-156 were considered in light of the statutory mandate that the council adjust the figures contained in them on a regular basis.

Fiscal and Operational Impacts

The implications for this proposal for the trial courts should be minimal. The figure in Appendix H is information for the use of potential litigants, before any case has been filed, and should not impact court processes. The form is informational only and is not filed with or completed by the courts. No costs or operational impacts are associated with the approval of the report to the Legislature.

Attachments and Links

1. Appendix H (adjusted civil penalty), at page 5
2. Form EJ-156, at pages 6–7
3. Formula for adjusting exemption amounts on form EJ-156, at page 8
4. *Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions*, at page 9
5. 2018 California Consumer Price Index for All Urban Consumers, Department of Industrial Relations, www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF

Appendix H

Amount of Civil Penalty to Cure Alleged Violation of Proposition 65 for Failure to Provide Certain Warnings (Health & Saf. Code, § 26249.7(k))

Formula

Under Health and Safety Code section 26249.7(k), the amount of civil penalty per facility or premises that an alleged violator may agree to pay within 14 days of service of a notice of violation under that section will be computed and adjusted as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers, as established by the California Department of Industrial Relations.

Calculation and adjustment

Effective April 1, 2019, the amount of civil penalty that an alleged violator may agree to pay within 14 days of service of a notice of violation under Health and Safety Code section 26249.7(k)(2)(B)(ii) is **\$565** per facility or premises where the alleged violation occurred.

The calculation is as follows:

$$\$563.92 = \left[\frac{272.51 - 241.623}{241.623} + 1 \right] \times \$500$$

Under Health and Safety Code section 26249.7(k)(2)(B)(ii), the adjusted penalty amount is rounded to the nearest \$5, so the dollar amount of the adjusted limit is rounded to \$565.

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 703.140(b)

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b).

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)

<u>Code Civ. Proc., § 703.140(b)</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
(1)	The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence,	\$ 29,275
(2)	The debtor's interest in one or more motor vehicles	\$ 5,850
(3)	The debtor's interest 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 (value is of any particular item)	\$ 725
(4)	The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	\$ 1,750
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	\$ 1,550
(6)	The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	\$ 8,725
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	\$ 15,650
(11)(D)	The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	\$ 29,275

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 704.010 et seq.

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)

<u>Code Civ. Proc. Section</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
704.010	Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction)	\$ 3,325
704.030	Material to be applied to repair or maintenance of residence	\$ 3,500
704.040	Jewelry, heirlooms, art	\$ 8,725
704.060	Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$4,850)	\$ 8,725
704.060	Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$9,700)	\$ 17,450
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) ¹	
	• Public benefits, one depositor is designated payee	\$ 1,750
	• Social security benefits, one depositor is designated payee	\$ 3,500
	• Public benefits, two or more depositors are designated payees ²	\$ 2,600
	• Social security benefits, two or more depositors are designated payees ²	\$ 5,250
704.090	Inmate trust account	\$ 1,750
	Inmate trust account (restitution fine or order)	\$ 325 ³
704.100	Aggregate loan value of unmaturing life insurance policies	\$ 13,975

¹ The amount of a deposit account that exceeds exemption amounts is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

² If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

³ This amount is not subject to adjustments under Code Civ. Proc., § 703.150.

**Calculation of Dollar Amounts of Exemptions
Under Code of Civil Procedure Sections 703.140(b) and 704.010 et seq.
(Adjusted April 1, 2019)**

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), are calculated as follows:

Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2019)

The calculation for the adjusted dollar amounts of the exemptions in Code of Civil Procedure sections 703.140(b) and 704.010 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{272.51 - 249.666}{249.666} + 1 \right] \times \text{Previous dollar amount} = 1.092 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)



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MR. MARTIN HOSHINO
Administrative Director,
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March __, 2019

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Re: Report on Potential Adjustments of Dollar Amounts of Homestead
Exemptions, as required under Code of Civil Procedure section
703.150(c)

Dear Ms. Boyer-Vine, Ms. Contreras, and Mr. Wilson:

The Judicial Council respectfully submits this report on potential adjustments to the dollar amounts of certain exemptions from enforcement of judgments, as required by Code of Civil Procedure section 703.150(c). That statute provides that at three-year intervals beginning on April 1, 2013, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of the homestead exemptions in effect immediately before that date as provided in section 704.730(a) may be increased under the formula set forth in section 703.150(d), should the Legislature approve such an adjustment.

Section 703.150(d) provides that the Judicial Council is to determine the amount of the potential adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers (CCPI), published by the Department of Industrial Relations, for the most recent three-year period ending on December 31 preceding the adjustment date, with each adjusted amount rounded to the nearest \$25. The council has calculated that the adjusted amounts based on the formula attached to this report would be as follows:

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Ms. Erika Contreras
Mr. E. Dotson Wilson
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- The exemption amount in section 704.730(a)(1) (currently \$75,000) would be increased to \$81,900.
- The exemption amount in section 704.730(a)(2) (currently \$100,000) would be increased to \$109,200.
- The exemption amount in section 704.730(a)(3) (currently \$175,000) would be increased to \$191,100.

As a point of information: while this letter reports the potential adjustment based on the change in CCPI over the past three years as mandated by statute, the homestead exemption amounts were last revised in 2010, nine years ago. The CCPI increased by 9.2 percent over the past three years, as is reflected in the figures above. It has increased 21.6 percent in the period since 2010.

If you have any questions related to this report, please contact Deborah Brown, Chief Counsel, at 415-865-7667, deborah.brown@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council of California

MH/AMR
Attachment

cc: Members of the Judicial Council
Eric Dang, Policy Consultant, Office of Senate President pro Tempore Toni G. Atkins
Amy Alley, Policy Advisor, Office of Senate President pro Tempore Toni G. Atkins
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ATTACHMENT

**Calculation of Dollar Amounts of Exemptions
Under Code of Civil Procedure Sections 703.140(b) and 704.010 et seq.
(Adjusted April 1, 2019)**

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in the *Current Dollar Amounts of Exemptions From Enforcement of Judgments*, are calculated as follows:

Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. 2018)} - \text{annual CCPI (Dec. 2013)}}{\text{annual CCPI (Dec. 2013)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2019)

The calculation for the adjusted dollar amounts of the exemptions in Code of Civil Procedure sections 703.140(b) and 704.010 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{272.51 - 249.666}{249.666} + 1 \right] \times \text{Previous dollar amount} = 1.092 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)