

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1099 (Wieckowski)
Version: March 24, 2022
Hearing Date: April 5, 2022
Fiscal: Yes
Urgency: No

SUBJECT

Bankruptcy: debtors

DIGEST

This bill makes a series of modifications to the income, assets, and belongings that a debtor may exempt from distribution to creditors in the bankruptcy process.

EXECUTIVE SUMMARY

When someone declares bankruptcy, the law allows that person to shield parts of their income, assets, and belongings from being sold off to satisfy the person's creditors. These categories of shielded property are known as exemptions. The idea behind exemptions is to ensure that the debtor maintains sufficient resources to meet their basic needs and the basic needs of their dependents. The exemptions also serve to help the debtor launch the fresh start that bankruptcy is supposed to offer. Though bankruptcy law and courts are federal, states can elect to design their own set of exemptions, and California has done just that. This bill makes a series of modifications to those exemptions. Specifically, the bill (1) exempts any appreciation in the value of a homestead after the bankruptcy filing; (2) prohibits the seizure of a vehicle based on the fact of filing for bankruptcy alone; (3) increase the vehicle exemption from \$5,850 to \$9,500; (4) eliminates the requirement for spouses to obtain a waiver of the alternative exemptions from the other spouse if they are legally separated; (5) exempts vehicles customized for a disability; (6) makes vacation, sick pay, and other wages exempt; (7) makes payments from an employment dispute settlement agreement exempt if needed for support; (8) exempts wrongful death/life insurance payments for a spouse exempt if needed for support; (9) exempts maintenance and support to the extent reasonable and necessary; and (10) sets rate of interest for penalties charged in a redemption of property from a tax lien scenario at not more than 10 percent.

The bill is sponsored by National Association of Consumer Bankruptcy Attorneys. Support comes from bankruptcy attorneys. There is no opposition on file. If the bill passes out of this Committee, it will be heard next in the Senate Governance and Finance Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires the Legislature, pursuant to the California Constitution, to protect a certain portion of the homestead and other property, from forced sale. (Cal. Const., art. XX, § 1.5.)
- 2) Establishes the “704 exemptions”: categories of property and the conditions and amount which a debtor may claim as exempt from enforcement of a money judgment, as specified. (Code Civ. Proc. Secs. 704.010 - 704.210.)
- 4) Establishes the “703 exemptions”: 11 categories of alternative exemptions which the bankruptcy debtor may elect to use in lieu of the 704 exemptions, as specified. (Code Civ. Proc. § 703.140(b).)
- 5) Establishes the 704 homestead exemption as the greater of \$300,000 or the countywide median sale price of a single-family home in the calendar year prior to the year in which the judgement debtor claims the exemption, not to exceed \$600,000, with all figures to be adjusted for inflation annually. (Code Civ. Proc. § 704.730.)
- 6) Directs the Judicial Council to adjust the 703 and 704 exemptions at every three-year interval ending on April 1, as specified, based on the change in the annual California Consumer Price Index for All Urban Consumers, as specified, and subject to approval by the Legislature. (Code Civ. Proc. § 703.150.)
- 6) Prohibits a motor vehicle seller or holder of a contract from accelerating the maturity of any part or all of the amount due under the contract or repossess the motor vehicle, in the absence of default. (Civ. Code § 2983.3(a).)
- 7) Allows, after default by a motor vehicle buyer, the seller or holder to repossess or voluntarily accept surrender of the motor vehicle and allows any person liable on the contract to reinstate the contract or the seller or holder cannot accelerate the maturity of any part or all of the contract prior to the expiration of the right to reinstate, except under specified conditions. (Civ. Code § 2983.3(b).)
- 8) Exempts loans made pursuant to the California Finance Lenders Law from the protections set forth in (4) and (5), above. (Civ. Code § 2983.3(f).)
- 9) Requires spouses to waive the right to claim 704 exemptions in order to elect to instead utilize the applicable 703 exemptions if a bankruptcy petition is filed individually and not jointly. (Code Civ. Proc. § 703.140(a)(2).)

- 10) Establishes a formula for calculation of penalties to be charged for redemption of a property that is the subject of a tax lien. (Rev. & Tax Code § 4103(a).)
- 11) Provides that penalties assessed pursuant to (10), above, constitute interest for the purpose of any claim in bankruptcy proceedings. (Rev. & Tax Code § 4103(b).)

This bill:

- 1) Provides that neither the act of filing a bankruptcy petition by the buyer or other individual liable on the contract nor the status of either of those persons as a debtor in bankruptcy constitutes a default in the performance of any of the buyer's obligations under the contract, and neither may be used as a basis for accelerating the maturity of any part or all of the amount due under the contract or for repossessing the motor vehicle.
- 2) Increases the motor vehicle exemption from \$5,850 to \$9,500 under the 703 exemptions and from \$3,325 to \$9,500 under the 704 exemptions.
- 3) Treats motor vehicles that have been altered to accommodate a disability as exempt health aids under both the 703 and 704 exemptions.
- 4) Eliminates the requirement for a debtor who is separated from the debtor's spouse as of the date the bankruptcy petition is commenced to obtain a waiver of 704 exemptions from the estranged spouse in order for the debtor to elect to utilize the applicable 703 exemptions.
- 5) Treats, under the 704 exemptions, any appreciation in the value of a homestead after the bankruptcy as exempt.
- 6) Caps the applicable rate of interest for penalties charged to redeem a property from a tax default lien at no more than 10 percent.
- 7) Makes accrued vacation, sick pay, and other wages exempt under both the 703 and 704 exemptions.
- 8) Treats wrongful death or life insurance payments based on the death of a spouse as exempt under the 703 exemptions to the extent reasonable and necessary for support.
- 9) Provides that payments for alimony, maintenance, and support of the debtor are exempt, under the 704 exemptions, to the extent reasonable and necessary for support.

- 10) Treats an award of damages from or a settlement arising out of a violation of any law relating to the debtor's employment as exempt under the 703 exemptions, to the extent necessary for the support of the debtor and the spouse and dependents of the debtor.

COMMENTS

1. Background on bankruptcy exemptions in California

In a bankruptcy action, exemptions generally allow a person to protect certain types of assets during the bankruptcy process. If an asset is exempt, the asset can generally not be taken to pay creditors' claims. These property exemptions are designed to ensure that a debtor maintains the ability to support themselves, as well as dependent family members, after the entry of judgment, and also to facilitate the debtor's financial recovery.

Under the federal Bankruptcy Code, states may either adopt the federal exemptions listed in the Bankruptcy Code or opt out of those exemptions and create different judgment exemptions. (11 U.S.C. Sec. 522(b)(1).) California has not authorized the use of the exemptions in the federal Bankruptcy Code, so California residents filing for bankruptcy are limited to the exemptions made available to them under nonbankruptcy law. (Code Civ. Proc. § 703.130.)

Individuals filing for bankruptcy in California can choose between two different sets of exemptions, known as the 703 exemptions and the 704 exemptions. The "703 exemptions," located in Code of Civil Procedure Section 703.140(b), consist of 11 categories that are modeled after federal bankruptcy law. In comparison, the "704 exemptions," contained in Code of Civil Procedure Sections 704.010 through 704.210, provide 21 different types of exemptions that protect a wider range of property. Perhaps most notably, the 704 exemptions allow for a much more substantial homestead exemption, which generally seeks to protect a debtor against forced sale of their home to satisfy debts. Notably, the 703 exemptions are specific exemptions that a bankruptcy debtor may elect in lieu of all other exemptions while the 704 exemptions are available to all debtors in California seeking to exempt specified property from enforcement of a money judgment.

2. Modifications proposed by this bill

SB 1099 could be fairly characterized as a bankruptcy exemptions omnibus. It proposes ten different modifications to how bankruptcy exemptions operate in California. Each is described in brief, below.

a. Changes to the treatment of homestead appreciation

The homestead exemption in California goes from a minimum of \$300,000 up to a max of \$600,000. Within that band, the exact amount of the exemption depends on the median sale price in the county where the homestead is located. (Code Civ. Proc. § 704.730.)

Under Ninth Circuit precedent, the value of a bankruptcy debtor's homestead is calculated by taking a "snapshot" of the debtor's equity in the property at the time the debtor files for bankruptcy. (*In re Gebhart* (2010) 621 F.3d 1206.) If the equity is less than the exemption, the debtor keeps the homestead. If the equity exceeds the exemption – a scenario that most often applies to seniors who have been living in their home and paying down the mortgage for years – the homestead will be sold and the proceeds above and beyond the exemption will be distributed to the creditors.

The author and sponsor of this bill explain that, in a rising market, bankruptcy trustees have an incentive to delay selling the homestead for as long as possible in order to let its value appreciate. From the trustee's point of view, this practice enables them to obtain more money to distribute to the creditors. From the debtor's point of view, the practice increases the likelihood that they will lose their home in bankruptcy and drags out the bankruptcy process, thus preventing the debtor from moving on to the fresh start that bankruptcy is supposed to afford them.

To disrupt that dynamic and realign the trustee's incentives with prompt disposition of the bankruptcy estate, this bill modifies how any increase in the value of the debtor's homestead would be treated. The bill would treat as exempt any appreciation in the value of the homestead between the time that the bankruptcy petition is filed and the time of sale.

b. Preventing repossession or acceleration of a vehicle purchase contract based on bankruptcy filing alone

When California consumers purchase a motor vehicle on an installment contract, existing law generally prohibits the creditor from repossessing the vehicle or accelerating the payments schedule unless the consumer defaults on their obligations. According to the author and sponsors, however, some creditors have taken the view that a creditor may repossess a vehicle or accelerate the payment schedule based on the fact that the consumer has filed for bankruptcy alone. As a result, some consumers have apparently lost their vehicles despite never having missed a car payment. Given the critical importance that having a car often plays in carrying out basic daily functions, the author and sponsors believe this practice to be unfair and counterproductive to the financial rehabilitation of the debtor. Accordingly, this bill would establish that the filing of bankruptcy alone is not sufficient grounds for a creditor to repossess a vehicle or accelerate the vehicle payment schedule.

As one of the supporters of the bill points out, in addition to decreasing the likelihood that a debtor loses access to their car, the proposed change should also benefit the bankruptcy courts in terms of efficiency:

Currently, creditors are burdened with the administration of attempting to enforce the procedure required of debtors to avoid the threatened repossession. A 'reaffirmation agreement' must be produced, signed, filed and a hearing held with the presiding Judge, to ensure the debtors vehicle is not repossessed. The administrative burden on the creditor and, the procedural burden on the Court to consider, hear and rule on these reaffirmation agreements benefits no one, and this process should be abolished.

c. Increasing the motor vehicle exemption to \$9,500

The current exemptions for a motor vehicle are \$5,850 under the 703 exemptions and \$3,325 under the 704 exemptions. Although the Judicial Council is charged with adjusting the exemption upward every three years to account for inflation, the author and sponsor contend that recent spikes in the price of used cars have rendered the existing exemption levels far too low. Using inflationary tables specific to cars and trucks, the proponents point out, the bill's proposed new vehicle exemption level would be roughly where it belongs. To illustrate, a supporter of the bill writes:

[W]ith the current \$5,850 exemption, a bankruptcy debtor can only protect the equivalent value of a 2011 Ford Focus, with cheapest trim model, standard equipment, and 100,000 miles. With the improved \$9,500 vehicle exemption, a bankruptcy debtor would not quite be able to protect a 2015 Ford Focus, with cheapest trim model, standard equipment, and 70,000 miles (that value is actually about \$10,925). [...] Even with what – on the surface – may seem to be a generous vehicle exemption amount, the debtor's fresh start will not even protect a seven-year old modest vehicle with 70,000 miles.

The author also points out, by way of comparison, that a number of other states already have vehicle exemptions close to or above the amount proposed by this bill. For example, some of those current exemptions, as reported by the author, are:

- Connecticut - \$8,000
- Idaho - \$11,500
- Indiana - \$9,250
- Iowa - \$8,000
- Kansas - \$20,000
- Maine - \$10,500

- Mississippi - \$9,000
- Nebraska - \$9,000
- New Hampshire - \$15,000
- New Mexico - \$8,500
- North Dakota - \$15,000
- Puerto Rico – Unlimited if the vehicle is a “working tool” for the consumer.
- Rhode Island - \$12,000
- Tennessee - \$9,000
- Vermont - \$9,900
- Virginia - \$11,000

d. Changing spousal waiver requirements for separated couples

Electing to use the 703 alternative exemptions instead of the 704 exemptions can sometimes be to a debtor’s advantage, depending somewhat on what the debtor owns. In order to use the 703 exemptions, however, existing law requires a married debtor to obtain their spouse’s consent to waive the 704 exemptions. This is all straightforward enough if the couple is on good terms. Where the couple is estranged, however, obtaining the waiver can become especially problematic. In some circumstances, it can be difficult to locate the spouse. In other cases, abusive spouses may seek to use the other spouse’s need for the waiver as a form of leverage. As one supporter of the bill explains it:

[C]urrent law is causing significant hardship for the spouse who had less agency in the former relationship, oftentimes women. Due to an estranged spouse or an abusive spouse, women find themselves unable to get sign-off from their former partner. A woman may not know where they are, they may refuse to permit her to file for bankruptcy out of spite even though they are separated, or she may not be able to approach them without risking her own safety. To make matters worse, it is not uncommon for the disempowered spouse to be in financial straits because of money problems caused by their partner during the marriage or caused by them having to flee an unhealthy or abusive marriage.

In order to disrupt this dynamic, the bill would carve out an exception to the usual need to obtain a waiver. In circumstances where a debtor is living separate and apart from their spouse when the bankruptcy petition is filed, no waiver of the 704 exemptions would be required, except if the couple shares an ownership interest in property that could be exempted as a homestead under the 704 exemptions.

e. Exempting vehicles modified for disability as health aids

Property that a debtor needs in order to address specific health concerns is generally exempt from distribution to creditors in bankruptcy. Consistent with this idea, this bill would clarify that motor vehicles which have been modified to accommodate the debtor's disability or the disability of the debtor's spouse or dependents are exempt as health aids, even if the value of the modified vehicle exceeds the standard motor vehicle exemption.

f. Makes wages, vacation credits or accrued vacation and sick pay exempt

Existing law provides protection under the 704 exemptions for certain accumulated vacation credits. This bill would expand that exemption to include accrued vacation, sick pay, and wages. The bill would also insert a matching exemption into the 703 exemptions.

The author and sponsors understandably contend that debtors have earned and saved their wages, sick pay, and vacation pay over time. That is true, but debtors may lose a number of things through bankruptcy that they have earned. From a policy perspective, bankruptcy exemptions properly apply where the underlying property is needed for the basic support of the debtor and the debtor's dependents, or where the underlying property is necessary to ensure that the debtor has a genuine opportunity to make a fresh start. Some of a debtor's wages, accrued sick pay, and vacation pay may serve those policy objectives, but beyond a certain threshold, that case becomes harder to make. Accordingly, the author proposes to offer amendments in Committee that would cap this proposed exemption at \$7,500.

g. Makes payments from a settlement agreement that comes out of employment exempt if needed for support

Workers who have been sexually harassed, racially discriminated against, retaliated against for being a whistleblower, or denied wages sometimes encounter financial difficulty as a result. This is particularly true in retaliation cases in which the worker gets fired for exercising a workplace right. The worker may have a solid legal claim against the employer, but a legal claim does not put food on the table while it is pending. Under existing law, however, if circumstances push the worker into bankruptcy, the worker loses control over the legal claim and the right to the proceeds. Since the claim is not exempt, it becomes part of the bankruptcy estate and may be settled quickly by the trustee in order to pay off the creditors. This dynamic arguably rewards employers who have violated the law and further punishes the worker for having exercised workplace rights.

To disrupt that dynamic, this bill would treat the proceeds from a settlement agreement based on an employment dispute as exempt under the 703 exemptions up to whatever

amount is reasonable and necessary for the support of the debtor, the debtor's spouse, and any dependents. The proposed exemption would be similar to existing exemptions for causes of action for personal injury, wrongful death, and workers' compensation in the 704 context. (Code Civ. Proc. §§ 704.140, 704.150, 704.160.)

h) Makes wrongful death/life insurance payments for a spouse exempt if needed for support

Existing law exempts money that a debtor receives due to the death of someone on whom the debtor was dependent. Compensation for the death of a spouse is not currently exempt, however. This bill would extend the existing exemptions to cover the death of a spouse as well, though the amount of the exemption would be limited to an amount reasonable and necessary for the debtor's support.

i) Exempts alimony, maintenance and support to the extent reasonable and necessary, under the 703 exemptions.

Under current law, if a debtor receives alimony, maintenance, or support payments from a former spouse and the debtor elects to use the 703 exemptions, the payments are exempt from bankruptcy to the extent they are needed for the support of the debtor or the debtor's dependents. No parallel exemption exists in the 704 context, however. This bill would establish such a parallel exemption.

j) Sets rate of interest for penalties charged in a redemption of property from tax lien scenario at not more than 10 percent

When a property owner falls behind on the property tax bill, the jurisdiction in question may proceed to place a tax lien on the property. In order to redeem the property and prevent its sale, the taxpayer must pay off both the lien and associated penalties. The penalties are calculated according to a formula set forth in the Revenue and Taxation Code which amounts to an 18 percent interest rate. (Rev. & Tax Code § 4103(a).) The author and sponsor of this bill point out that this high interest rate makes it especially difficult for a homeowner to clear the lien while also staying current on ongoing payments. With that in mind, this bill proposes to cap the interest rate charged to homeowners in bankruptcy for past due property tax payments at 10 percent, a rate that is consistent with the interest rate on unpaid court judgments and closer to the interest rates applicable in many other credit transactions.

3. General policy considerations

There is no opposition to the bill on file. In very general terms however, expanding exemptions involves some policy tradeoffs. Broader exemptions usually mean that debtors will be able retain more of their money, assets, and belongings as they emerge from the bankruptcy process. From the point of view of the debtor, obviously, this is positive. From a societal perspective, there is value in ensuring that debtors can make a

genuinely fresh start and, in time, reintegrate themselves successfully into the overall economy. That is, after all, the purpose of bankruptcy.

On the other hand, whenever exemptions expand, there is less left in the bankruptcy estate for distribution to creditors. Lenders often assert that this not only leaves them with less money in any given bankruptcy case, but also may dissuade them from extending credit as easily in the future, thus potentially shrinking overall access to credit.

4. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- cap the proposed exemption for accrued vacation, sick pay, and wages at \$7,500.

A mock-up of the amendments in context is attached to this analysis.

5. Arguments in support of the bill

According to the author:

While crucial updates have been made to our bankruptcy code in recent years, SB 1099 captures some remaining key improvements still needed so that bankruptcy is truly available to those who need it and that we leave a consumer with enough to rebuild after the bankruptcy. This bill modestly adds greater protections for consumers buried in debt and needing to file for bankruptcy. The pandemic did not affect all Californians equally and many who have been most affected were already struggling with paying their bills. The looming collective mountain of debt being carried by those trying to get by has not yet hit our justice system. The Legislature has an opportunity this year to help those left financially ruined and desperately needing bankruptcy relief.

As sponsor of the bill, the National Association of Consumer Bankruptcy Attorneys writes:

As California's economy emerges from the economic disruption caused by COVID over the last two years, it continues to present serious challenges for many honest, hardworking men and women. Many businesses have been forced to close or drastically curtail operations due to the pandemic, dramatically affecting the financial health of families throughout the state. For these families who face collection lawsuits, home foreclosures, evictions, and garnished wages, bankruptcy is the final and best hope for protecting most

basic household assets and modest incomes. S.B. 1099 adds important protections desperately needed by those families still struggling to recover.

SUPPORT

National Association of Consumer Bankruptcy Attorneys (sponsor)
Gold & Hammes, Attorneys
Law Offices of John C. Colwell
1 individual

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 956 (Wieckowski, 2022) simplifies and clarifies implementation of a recent law that exempts contributions made to ScholarShare college savings accounts, up to specified limitations, from being taken away by judgment or bankruptcy creditors. SB 956 is currently pending consideration on the Senate Floor.

SB 1477 (Wieckowski, 2022) proposes to: (1) modify the formula for garnishing a judgment debtor's wages to satisfy a judgment; (2) eliminates courts' authority to issue a bench warrant when a judgment debtor or third person does not appear as ordered for a debtor's examination; and (3) modifies when a person must disclose, as part of a child support case, that they plan to file for public assistance and eliminating the state's right to collect interest on past-due child support. SB 1477 is scheduled to be heard before this Committee on the same day as this bill.

Prior Legislation:

AB 1885 (Committee on Budget, Ch. 94, Stats. 2020) increased the homestead exemption to the greater of \$300,000 or the countywide median sale price of a single-family home in the calendar year prior to the year in which the judgement debtor claims the exemption, not to exceed \$600,000, with all figures to be adjusted for inflation annually.

SB 308 (Wieckowski, 2015) would have increased the amounts of the homestead exemption, removed the homestead reinvestment requirement, and revised and increased various amounts in various categories of property exemptions that are available to debtors. AB 308 failed passage on the Assembly Floor.

AB 1853 (Wieckowski, 2014) was substantially similar to AB 198. AB 1853 died in the Assembly Appropriations Committee.

AB 198 (Wieckowski, 2013) would have created additional categories of property exemptions available to debtors, raised the amount of the homestead exemption from between \$75,000 and \$175,000 to between \$200,000 and \$400,000, and removed the requirement that judgment debtors reinvest homestead exemption money into another property within six months from the date the home was sold, or else lose their judgment exemption status. AB 198 died in the Assembly Appropriations Committee.

AB 929 (Wieckowski, Ch. 678, Stats. 2012) expanded exemptions to include workers compensation benefits, relocation benefits, motor vehicles, jewelry, and tools of the trade.

AB 1046 (Anderson, Ch. 499, Stats. 2009) raised the amounts of a debtor's homestead exemption by \$25,000 in each available category, establishing the current statutory levels of \$75,000, \$150,000, and \$175,000.

AB 182 (Harman, Ch. 379, Stats. 2003), on or before April 1, 2003, and at three-year intervals thereafter, required the Judicial Council to adjust the amount of the exemptions applicable to exempt property based on changes in the annual California Consumer Price Index for All Urban Consumers, and increased the statutory value of various forms of real and personal property a debtor may claim for exemptions from enforcement of a money judgment and in bankruptcy actions.

SB 832 (Kopp, Ch. 196, Stats. 1995) raised the dollar amounts a debtor may claim for exemptions from enforcement of a money judgment and in bankruptcy actions.

AB 2885 (Committee on Banking and Finance, Ch. 1115, Stats. 1994) repealed the Personal Property Brokers Law, the Consumer Finance Lenders Law, and the Commercial Finance Lenders Law, consolidated those laws, and reenacted them as the California Finance Lenders Law.

AB 707 (McAlister, Ch. 1364, Stats 1982) codified the Enforcement of Judgments Law (Code Civ. Proc. Sec. 680.010 *et seq.*), including the statutory dollar amount of personal property exempted from the enforcement of monetary judgments.

Amended Mock-up for 2021-2022 SB-1099 (Wieckowski (S))

Mock-up based on Version Number 98 - Amended Senate 3/24/22

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

SECTION 1. Section 2983.3 of the Civil Code is amended to read:

2983.3. (a) (1) In the absence of default in the performance of any of the buyer's obligations under the contract, the seller or holder may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(2) Neither the act of filing a petition commencing a case for bankruptcy under Title 11 of the United States Code by the buyer or other individual liable on the contract nor the status of either of those persons as a debtor in bankruptcy constitutes a default in the performance of any of the buyer's obligations under the contract, and neither may be used as a basis for accelerating the maturity of any part or all of the amount due under the contract or for repossessing the motor vehicle.

(b) If after default by the buyer, the seller or holder repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the contract shall have a right to reinstate the contract and the seller or holder shall not accelerate the maturity of any part or all of the contract prior to expiration of the right to reinstate, unless the seller or holder reasonably and in good faith determines that any of the following has occurred:

(1) The buyer or any other person liable on the contract by omission or commission intentionally provided false or misleading information of material importance on the buyer's or other person's credit application.

(2) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, in order to avoid repossession has concealed the motor vehicle or removed it from the state.

(3) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has become substantially impaired in value, or the buyer, any other person liable on the contract, or any nonoccasional permissive user in possession of the motor vehicle has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle may become substantially impaired in value.

(4) The buyer or any other person liable on the contract has committed, attempted to commit, or threatened to commit criminal acts of violence or bodily harm against an

agent, employee, or officer of the seller or holder in connection with the seller's or holder's repossession of or attempt to repossess the motor vehicle.

(5) The buyer has knowingly used the motor vehicle, or has knowingly permitted it to be used, in connection with the commission of a criminal offense, other than an infraction, as a consequence of which the motor vehicle has been seized by a federal, state, or local agency or authority pursuant to federal, state, or local law.

(6) The motor vehicle has been seized by a federal, state, or local public agency or authority pursuant to (A) Section 1324 of Title 8 of the United States Code or Part 274 of Title 8 of the Code of Federal Regulations, (B) Section 881 of Title 21 of the United States Code or Part 9 of Title 28 of the Code of Federal Regulations, or (C) other federal, state, or local law, including regulations, and, pursuant to that other law, the seizing authority, as a precondition to the return of the motor vehicle to the seller or holder, prohibits the return of the motor vehicle to the buyer or other person liable on the contract or any third person claiming the motor vehicle by or through them or otherwise effects or requires the termination of the property rights in the motor vehicle of the buyer or other person liable on the contract or claimants by or through them.

(c) Exercise of the right to reinstate the contract shall be limited to once in any 12-month period and twice during the term of the contract.

(d) The provisions of this subdivision cover the method by which a contract shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession:

(1) When the default is the result of the buyer's failure to make any payment due under the contract, the buyer or any other person liable on the contract shall make the defaulted payments and pay any applicable delinquency charges.

(2) When the default is the result of the buyer's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the buyer or any other person liable on the contract shall either satisfy all encumbrances and liens or, in the event the seller or holder satisfies the encumbrances and liens, the buyer or any other person liable on the contract shall reimburse the seller or holder for all reasonable costs and expenses incurred therefor.

(3) When the default is the result of the buyer's failure to keep and maintain insurance on the motor vehicle, the buyer or any other person liable on the contract shall either obtain the insurance or, in the event the seller or holder has obtained the insurance, the buyer or any other person liable on the contract shall reimburse the seller or holder for premiums paid and all reasonable costs and expenses, including, but not limited to, any finance charge in connection with the premiums permitted by Section 2982.8, incurred therefor.

(4) When the default is the result of the buyer's failure to perform any other obligation under the contract, unless the seller or holder has made a good faith determination that

the default is so substantial as to be incurable, the buyer or any other person liable on the contract shall either cure the default or, if the seller or holder has performed the obligation, reimburse the seller or holder for all reasonable costs and expenses incurred in connection therewith.

(5) Additionally, the buyer or any other person liable on the contract shall, in all cases, reimburse the seller or holder for all reasonable and necessary collection and repossession costs and fees actually paid by the seller or holder, including attorney's fees and legal expenses expended in retaking and holding the vehicle.

(e) If the seller or holder denies the right to reinstatement under subdivision (b) or paragraph (4) of subdivision (d), the seller or holder shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the seller or holder fails to sustain the burden of proof, the seller or holder shall not be entitled to a deficiency, but it shall not be presumed that the buyer is entitled to damages by reason of the failure of the seller or holder to sustain the burden of proof.

(f) This section does not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) of the Financial Code.

SEC. 2. 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) (A) 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).

(B) Notwithstanding subparagraph (A), a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition commencing the case under Title 11 of the United States Code is filed, unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.

(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 nine thousand five hundred dollars (\$9,500) 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 unmaturred 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 unmaturred 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, the debtor's spouse, or a dependent of the debtor, including vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

(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.

(F) The aggregate interest, not to exceed \$7,500, in vacation credits or accrued, or unused, vacation pay, sick leave, family leave, or wages, as defined in Section 200 of the Labor Code.

(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 under a settlement agreement arising out of or regarding the debtor's employment, to the extent reasonably necessary for the support of the debtor, the debtor's spouse, or a dependent of the debtor.

(C) A payment on account of the wrongful death of an individual of whom the debtor was a spouse or dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a spouse or 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.

(E) A payment, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) on account of personal bodily injury of the debtor, the debtor's spouse, or an individual of whom the debtor is a dependent.

(F) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a spouse or dependent, to the extent reasonably necessary for the support of the debtor and the debtor's spouse or a 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.

(c) In a case under Title 11 of the United States Code, the value of the property claimed as exempt and the debtor's exemptions provided by this chapter with respect to such property shall be determined as of the date the bankruptcy petition is filed. Any appreciation in the value of the debtor's exempt interest in the property during the pendency of the case is exempt.

SEC. 3. 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 nine thousand five hundred dollars (\$9,500):

(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 nine thousand five hundred dollars (\$9,500) 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. 4. Section 704.050 of the Code of Civil Procedure is amended to read:

704.050. (a) Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

(b) Health aids described in subdivision (a) include vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

SEC. 5. Section 704.111 is added to the Code of Civil Procedure, to read:

704.111. Alimony, support, and separate maintenance, to the extent reasonably necessary for the support of the debtor and a dependent of the debtor, are exempt.

SEC. 6. Section 704.113 of the Code of Civil Procedure is amended to read:

704.113. (a) As used in this chapter, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 19858.1 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) The aggregate interest, not to exceed \$7,500, in All-vacation credits or accrued, or unused, vacation pay, sick leave, family leave, or wages as defined in Section 200 of the Labor Code are is exempt, ~~without making a claim.~~

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any earnings assignment order for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

SEC. 7. Section 22329 of the Financial Code is amended to read:

22329. (a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) (1) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(2) Neither the act of filing a petition commencing a case for bankruptcy under Title 11 of the United States Code by the borrower or other person liable on the loan nor the status of either of those persons as a debtor in bankruptcy constitutes a default in the performance of any of the borrower's obligations under the loan, and neither may be used as a basis for accelerating the maturity of any part or all of the amount due under the loan or for repossessing the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on their credit application.

(2) The borrower or any other person liable on the loan has concealed the motor vehicle or removed it from the state in order to avoid repossession.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default that were grounds for repossession or that occurred subsequent to repossession.

(1) When the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) When the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any

person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) When the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) When the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as to be incurable, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual and necessary fees in an amount not exceeding the amount specified in subdivision (e) of Section 22202 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

SEC. 8. Section 4103 of the Revenue and Taxation Code is amended to read:

4103. (a) Redemption penalties are the sum of the following:

(1) Beginning July 1st of the year of the declaration of tax default, on the declared amount of defaulted taxes at the rate of 1½ percent a month to the time of redemption. If the last day of any month falls on a Saturday, Sunday, or legal holiday, the additional penalty of 1½ percent shall attach after the close of business on the next business day.

(2) Beginning July 1st of each subsequent year, on the unpaid taxes for which the property would have been declared in default if there had not been a previous declaration, 1½ percent a month to the time of redemption. If the last day of any month falls on Saturday, Sunday, or a legal holiday, the additional penalty of 1½ percent shall attach after 5 p.m. on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of

delinquency on the “next business day” or for that whole day, that day shall be considered a legal holiday for purposes of this section.

(b) For purposes of an administrative hearing or any claim in a bankruptcy proceeding pertaining to the property being redeemed, the assessment of penalties determined pursuant to subdivision (a) with respect to the redemption of that property constitutes the assessment of interest. The rate of interest shall not exceed ten percent.