
THIRD READING

Bill No: SB 1099
Author: Wieckowski (D)
Amended: 5/19/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 4/5/22
AYES: Umberg, Borgeas, Caballero, Durazo, Hertzberg, Jones, Laird, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Gonzalez

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 4/20/22
AYES: Caballero, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Bankruptcy: debtors

SOURCE: National Association of Consumer Bankruptcy Attorneys

DIGEST: This bill makes a series of modifications to the income, assets, and belongings that a debtor may shield from distribution to creditors in the bankruptcy process or from judgment collection.

ANALYSIS:

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.)
- 3) 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).)
- 4) 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.)
- 5) 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) Makes the aggregate interest, not to exceed \$7,500, in accrued vacation, sick pay, and other wages exempt under both the 703 and 704 exemptions.
- 7) 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.
- 8) 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.

- 9) 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

Background on debtor exemptions. When someone declares bankruptcy or has a court judgment outstanding against them, 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.

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. Therefore, any modifications to the 704 exemptions proposed in this bill will impact not only bankruptcy proceedings, but also the collection of court judgments outside of the bankruptcy process.

Modifications to the debtors' exemptions proposed by this bill. This bill makes a series of modifications to the existing debtors' 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) 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;
- (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 motor vehicles that have been altered to accommodate a disability as exempt health aids under both the 703 and 704 exemptions;
- (6) makes the aggregate interest in vacation, sick pay, and other wages, up to \$7,500, exempt under both the 703 and 704 exemptions;
- (7) 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;
- (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; and
- (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.

Each of these proposed modifications is discussed in greater detail in the Senate Judiciary Committee Analysis of the bill at Comment 2.

General policy considerations. In very general terms, 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 or pay off a court judgment. 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, this bill is not anticipated to have a fiscal impact to the State.

SUPPORT: (Verified 5/20/22)

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

OPPOSITION: (Verified 5/20/22)

California Bankers Association
California Community Banking Network
California Credit Union League
California Judgment Preservation Alliance
Trustees for Reasonable Homestead Exemption Limits

ARGUMENTS IN SUPPORT: 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.

ARGUMENTS IN OPPOSITION: According to the California Bankers Association, the California Community Banking Network, and the California Credit Union League:

While we understand the author's intent to aid in the "fresh start" of homeowners going through bankruptcy, this bill as drafted would largely benefit wealthy debtors. [...] [W]e believe making additional expansions to the homestead exemption and other bankruptcy exemptions that will primarily support affluent debtors is gratuitous and will cause disproportionate harm to California borrowers compared to the debtors who would stand to benefit from the bill.

Further, the expanded exemptions established in SB 1099 would allow debtors with significant financial means to retain more of their assets post-bankruptcy, creating a moral hazard disincentivizing responsible bankruptcy avoidance, and an increased homestead exemption which will result in a further reduction of property tax revenues used to fund essential services provided to California communities by local governments, including critical public safety services. It will also limit availability of credit, reducing opportunities for potential Californians in need of credit, including first-time

homebuyers with far fewer assets than the debtors the bill is attempting to help.

According to the California Judgment Preservation Alliance:

We oppose SB 1099 because, in entering judgments in favor of the judgment creditor, the courts are acknowledging it is the judgment creditors who are the victims. Enforcement of a judgment in State court is the judgment creditor's lawful right; seeking protection from enforcement of that judgment in bankruptcy court is the judgment debtor's lawful right. SB 1099 is being presented as a "bankruptcy" bill; however, it also seeks to affect laws applicable in state court, thereby affecting the enforcement of all judgments in state court.

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113
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