

SENATE THIRD READING
SB 1099 (Wieckowski)
As Amended June 23, 2022
Majority vote

SUMMARY

Makes several changes to the statutory exemptions that govern the minimum of property California debtors may retain if they file for bankruptcy.

Major Provisions

- 1) Provides that in a bankruptcy case where the debtor's equity in a residence is less than or equal to the amount of the debtor's allowed homestead exemption as of the date the bankruptcy petition is filed, any appreciation in the value of the debtor's interest in the property during the pendency of the action is exempt.
- 2) Specifies that neither filing for bankruptcy protection nor one's status as a debtor in bankruptcy constitutes a default under a conditional sales contract for a motor vehicle or under a loan secured by a lien on a motor vehicle. Further specifies that neither such a filing nor status may be used as a basis for accelerating any of the amount due under the contract or loan, or for repossessing the motor vehicle.
- 3) Enacts the following changes to the statutory "703 exemptions," an alternative to the default "704 exemptions" that specify what property and assets debtors can keep in bankruptcy:
 - a) Clarifies that professionally prescribed health aids for the debtor's spouse are exempt.
 - b) Deems exempt any payments under settlement agreements arising out of a debtor's employment as reasonably necessary for the support of the debtor, the debtor's spouse, or a dependent.
 - c) Deems exempt payments for wrongful death, under a life insurance contract, due to personal bodily injury, or for loss of future earnings if the decedent was a spouse.
- 4) Enacts the following changes to both the 703 and 704 exemptions:
 - a) Increases the amount of equity in a motor vehicle that is exempt to \$9,500 from the current \$3,625 under the 703 exemptions or \$6,375 under the 704 exemptions.
 - b) Treats as an exempt health aid a motor vehicle that has been altered to accommodate disabilities, such as by installing a wheelchair lift.
 - c) Deems exempt up to \$7,500 in accrued, or unused, vacation pay, sick leave, family leave, and in vacation credits. (The 703 exemptions are amended to also include wages.)
 - d) Deems exempt alimony, support, and separate maintenance, to the extent reasonably necessary for the support of a debtor and any dependent.
- 5) Permits a married person who files individually for bankruptcy and elects to utilize the 703 exemptions to not have to obtain a written waiver of the 704 exemptions from their spouse, if the couple is separated and living apart on the date the bankruptcy petition is filed. Nevertheless, both spouses must sign if both spouses share an interest in a homestead.

COMMENTS

Background re: bankruptcy & exemptions. A debtor who is unable to pay their debts may seek relief from creditors by filing for bankruptcy, a protection that federal law has offered since 1800. Most people who file for bankruptcy are members of the middle class, who were managing their finances adequately until an unexpected income shock occurs. The most common reasons for declaring bankruptcy are unforeseeable: medical expenses, losing a job, or losing a spouse, whether through divorce or death.

Individuals typically file for bankruptcy under Chapter 7 or Chapter 13 of the United States Bankruptcy Code, thereby seeking to either discharge most of their debts completely (under Chapter 7, which is means-tested) or to repay part of their debts through a court-structured repayment plan (under Chapter 13). In 2005, federal bankruptcy legislation made it more difficult for debtors, especially those with high incomes, to discharge all of their debts in Chapter 7. It also increased to eight years, the waiting period from when an individual last filed Chapter 7 bankruptcy to when they may file again.

California law establishes a series of exemptions to protect a baseline amount of debtors' assets from seizure by creditors. The purpose of these exemptions is to ensure that the debtor and the debtor's family are able to meet basic needs, and not be deprived of their ability to make a living—even if they declare bankruptcy. Exemptions are meant to give the debtor a fair chance to rebuild; otherwise, bankruptcy would likely drive debtors further into debt to afford unavoidable necessities of life such as food, housing, and transportation. Code of Civil Procedure Sections 704.010 *et seq.* establish the main set of exemptions available to judgment debtors in California facing a judgment creditor's collection attempts. These exemptions are often referred to as "704 exemptions." A person who declares bankruptcy in California may choose either the 704 exemptions or a separate, but similar, set of exemptions set forth at Code of Civil Procedure Section 703.140(b), commonly known as "703 exemptions." This bill would increase certain exemptions and make other exemptions operate more effectively. As noted by the Senate Judiciary Committee in its analysis, this bill "could be fairly characterized as a bankruptcy exemptions omnibus." This bill's modifications to how bankruptcy exemptions operate in California are discussed below.

Provisions affecting the home. The California Constitution requires the Legislature to protect a "homestead"—essentially, the equity in a debtor's principal residence, if the debtor owns their home—of a certain value from being seized for the benefit of creditors. (California Constitution, article XX, section 1.5.) Most recently, in AB 1885 (Budget), Chapter 94, Statutes of 2020, the Legislature set the homestead exemption to the greater of (i) \$300,000 or (ii) the median sale price of a single-family home in the county where the home is located, for the calendar year prior to the year in which the debtor claims the exemption, not to exceed \$600,000. (Code of Civil Procedure Section 704.730.) Both of these amounts are adjusted annually for inflation. Accordingly, this bill provides, in pertinent part: "In a case where the debtor's equity in a residence is less than or equal to the amount of the debtor's allowed homestead exemption as of the date the bankruptcy petition is filed, any appreciation in the value of the debtor's interest in the property during the pendency of the action is exempt." Washington recently enacted a similar provision in its code. (Wash. Rev. Code 6.13.070.)

Provisions affecting the automobile and auto loans. It is likely that the automobile is the most important asset for a non-homeowner who declares bankruptcy. In most parts of the state, people

need to drive to reach their jobs, which in turn is essential to continuing to earn and avoid future debts. In recognition of this, a certain amount of equity in an automobile is shielded from creditors – currently, under California law, \$6,375 under the 703 exemptions and \$3,625 under the 704 exemptions. If the car is determined to be worth more than the exemption, then the debtor must sell the car and may keep the exempt amount, but must surrender the excess to creditors. This bill increases the amount of equity in an automobile that a debtor can retain to \$9,500 under both the 703 and 704 exemptions. Most people take out loans to purchase cars. Under current California law, declaring bankruptcy automatically triggers a default on most such loan contracts. This enables the lender to repossess the car or else accelerate the loan (i.e., demand that the whole loan be immediately repaid)—even if the debtor is current on all of their monthly installment payments. This bill changes this rule, and establishes that declaring bankruptcy does not automatically trigger a default under an automobile loan. *Note that this provision does not relieve the debtor from having to continue to repay their auto loan.*

Provisions affecting health aids, including vehicles modified for people with disabilities. The 703 exemptions protect "[p]rofessionally prescribed health aids for the debtor." The 704 exemptions protect from seizure "[h]ealth aids reasonably necessary to enable the...debtor or the spouse or a dependent...to work or sustain health," including prosthetics and orthopedics. (Code of Civil Procedure Section 704.050.) This bill would add professionally prescribed health aids for the debtor's spouse to the 703 exemptions. It would also include in the definition of "health aids," under both sets of exemptions, vehicles converted for use by people with disabilities, such as including a wheelchair lift or motorized steps. The ongoing need for such a vehicle for the disabled person "to work or sustain health" should be obvious.

Provisions affecting accrued sick leave, family leave, and vacation pay. One topic currently unaddressed is how much of an employee's unpaid but accrued sick leave, vacation pay, and family leave should be exempt if the employee declares bankruptcy. This bill would exempt these accrued amounts up to \$7,500 under the both the 703 and 704 exemptions. The 703 exemptions would also include wages within the \$7,500 cap.

Provisions affecting employment-related lawsuits, including for workplace discrimination and sexual harassment. This bill would include in the 703 exemptions 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." In other words, any settlements of wage-and-hour claims, employment discrimination and sexual harassment suits would be exempt, though only in amounts "reasonably necessary" for support.

Provisions affecting insurance and other payments for death of a spouse. The 703 exemptions protect money that a debtor receives due to the death of someone on whom the debtor was dependent, to the extent reasonably necessary for their support, but not due to the death of a spouse. These include payments for wrongful death, under a life insurance contract, due to personal bodily injury, or for loss of the decedent's future earnings. (Code of Civil Procedure Section 703.140 (b)(11).) This bill would make clear that such payments, when due to the death of a spouse, are similarly exempt. This is an important provision given that, as noted above, the death of a spouse (and the accompanying loss of their income) often triggers bankruptcy.

Provisions assisting debtors whose spouses are non-cooperative or abusive. If a married person files individually for bankruptcy, rather than jointly with their spouse, then by default the 704 exemptions apply. Currently, both spouses have to consent in writing if the filer wants to elect

the 703 exemptions. (Code of Civil Procedure Section 703.140 (a)(2).) This presents a challenge if the spouses are separated, particularly when they are not communicating. In the worst case, the debtor has separated from their spouse due to fear of domestic violence and cannot obtain a signature. This bill would address this problem by providing that "a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition...is filed." There is one exception, however. Both spouses must still waive the 704 exemptions in writing if they share an interest in a homestead. This is due to what may be sizable equity in the homestead, given that the homestead exemption falls under the 704 exemptions. This carve-out prevents one spouse from using home equity to pay off their debts without the consent of the other.

Provisions affecting child and spousal support. This bill would deem "[a]limony, support, and separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent...exempt" from seizure by creditors under the 704 exemptions. This protection already exists under the 703 exemptions. (Code of Civil Procedure Section 703.140 (b)(10)(D).) This provision is important given that, as discussed above, loss of a spouse's income through divorce is one of the principal drivers of bankruptcy. Only the amount of support "reasonably necessary" for the debtor or dependents is exempt; lavish support is not exempt. Creditors can still seize any excess amounts that the debtor cannot prove are reasonably necessary.

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.

Arguments in Support

Consumer Federation of California contends that this bill furthers the aims of bankruptcy:

[Bankruptcy] allows indebted consumers to get a fresh start and rebuild their finances. Unfortunately, consumers still face several barriers to recovery throughout this process. Under current law, consumers who have not missed a car payment can still have their vehicle taken away in bankruptcy. Individuals awarded money as a result of an employment law claim, like those for sexual harassment or racial discrimination, may have to give up that award to a creditor. These are just a few of the issues that bankruptcy comes with in California. SB 1099 updates the bankruptcy code to address these issues and ensure that consumers can properly get back on their feet.

Arguments in Opposition

The California Judgment Preservation Alliance is opposed to this bill in part because, by strengthening certain of the 704 exemptions, this bill also protects property belonging to non-bankruptcy-filing debtors:

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.

FISCAL COMMENTS

None

VOTES**SENATE FLOOR: 28-7-5**

YES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Dahle, Grove, Jones, Melendez, Nielsen, Wilk

ABS, ABST OR NV: Archuleta, Borgeas, Caballero, Hertzberg, Ochoa Bogh

ASM JUDICIARY: 9-2-0

YES: Stone, Cunningham, Bloom, Haney, Kalra, Maienschein, Reyes, Mia Bonta, Wicks

NO: Davies, Kiley

UPDATED

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CONSULTANT: Jith Meganathan / JUD. / (916) 319-2334

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