

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 688 (Wieckowski) – As Amended June 30, 2022

Policy Committee:	Rules	Vote:	8 - 0
	Judiciary		9 - 2

Urgency: No      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill eliminates the use of confessions of judgment in California. This bill also clarifies that this bill does not apply to a judgment by confession obtained or entered before January 1, 2023.

**FISCAL EFFECT:**

Possible cost pressure (Trial Court Trust Fund) of an unknown, but potentially significant amount, beginning in fiscal year (FY) 2023-24, to the trial courts in increased staff workload to hear and adjudicate breach of contract cases initiated by lenders that otherwise have avoided filing a lawsuit as a result of a confession by judgment clause. One eight-hour day of court time costs approximately \$8,000 in staff workload. It is unknown how many lawsuits would result from eliminating the confession by judgment statute, but if 10 civil actions are filed statewide annually, requiring five days of court time, the cost to the court would be \$400,000 annually.

**COMMENTS:**

1) **Purpose.** According to the author:

While confessions of judgment are not a pervasive problem, it is sensible to eliminate such a clause in...commercial contracts. [...] No one—whether an individual or small business owner—should be subject to such contractual language in order to secure a loan. A confession of judgment effectively permits a creditor—who typically is the drafter of the contract and sets terms—to unilaterally decide that an obligor has breached the contract, bypass the court, and go directly to collections.

2) **Confession of Judgment.** A confession of judgment, also known as a “cognovit,” allows a lender to apply to court for a money judgment against a borrower without having to file a lawsuit.

The cognovit is the ancient legal device by which the debtor consents in advance to the holder’s obtaining a judgment without notice or hearing. (*D.H. Overmeyer v. Frick Co.* (1972) 405 U.S. 174, 176.)

By signing a loan contract that includes a cognovit clause, the borrower “confesses” liability on the debt, at a time and under circumstances that are in the sole discretion of the lender. The confession eliminates the need for the lender to prove to the court that the borrower actually breached the contract and therefore owes the money. Once a court enters judgment on the basis of a confession, the creditor can proceed to collect what is owed by garnishing the debtor’s wages, seizing and selling the debtor’s personal property, placing a lien on any real property that a debtor owns, and seizing funds from a debtor’s bank account. There is no judicial oversight of these collection methods, which are typically performed by county sheriffs’ offices.

**Analysis Prepared by:** Kimberly Horiuchi / APPR. / (916) 319-2081