

**SENATE JUDICIARY COMMITTEE**  
**Senator Hannah-Beth Jackson, Chair**  
**2019-2020 Regular Session**

AB 2463 (Wicks)  
Version: August 5, 2020  
Hearing Date: August 13, 2020  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Enforcement of money judgments: execution: homestead

**DIGEST**

This bill prohibits a judgment creditor from forcing a judgment debtor to sell their principal place of residence to satisfy a consumer debt, unless the debt was secured by that residence, except in limited circumstances.

**EXECUTIVE SUMMARY**

Under current law, a judgment creditor can force a judgment debtor to sell their principal place of residence in order to satisfy any unsecured debt, no matter how small, as long as the judgment debtor has sufficient equity in their residence to recoup the homestead exemption (which is low relative to the median house price in the state). As a result, consumers are forced from their homes to satisfy very small debts, often under \$10,000. Even the threat of a forced home sale does considerable harm – consumers are often able to avoid a forced sale only by incurring significantly more debt through high-interest or predatory loans.

This bill will prohibit a creditor from forcing a home sale to satisfy a consumer debt except under specified circumstances. The exemptions to the prohibition are: a debt secured by the debtor's home; unpaid wages, employment benefits, taxes, child or spousal support, government fines and fees, or tort judgments; or a debt owed to a financial institution, other than a student loan debt, in excess of \$75,000. This bill also tasks the Judicial Council with adjusting the \$75,001 floor for debts owed to financial institutions every three years, and requires a creditor seeking to force a home sale to attest, under oath, that the debt is either not a consumer debt or falls into one of the exemptions.

This bill is sponsored by the California Low Income Consumer Coalition (CLICC) and is supported by a wide range of organizations, including the California Association of

Realtors, the Center for Responsible Lending, Consumer Reports, Elder Law & Advocacy, and National Consumer Law Center. There is no known opposition to this bill.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that, except where property is expressly exempted from collection by law, all property of the judgment debtor is subject to enforcement of a money judgment. (Code Civ. Proc., § 695.010(a).)
- 2) Permits a judgment creditor to create a lien on real property owned by the judgment debtor by recording an abstract of money judgment with the county recorder in which the real property is located. (Code Civ. Proc., §§ 697.310(a), 697.340.)
- 3) Creates the judgment lien in the amount required to satisfy the outstanding money judgment, which includes the underlying amount of the judgment plus simple interest accruing at ten percent per year. (Code Civ. Proc., §§ 685.010, 697.010, 697.350(a).)
- 4) Provides that the lien continues for 10 years from the date the money judgment was entered unless the money judgment is satisfied or the lien is released. (Code Civ. Proc., § 697.310(b).)
- 5) Permits the judgment creditor to renew the judgment and extend the lien after the initial 10-year period by filing an application for renewal with the court in which the judgment was entered, at any time prior to the expiration of the judgment. The judgment creditor may file renewal applications every 10 years to continue to renew the judgment. (Code Civ. Proc., §§ 683.020, 683.110(a), 683.120, 683.130, 683.180, 697.030, 697.310.)
- 6) Defines a “homestead” as the principal dwelling in which the judgment debtor, or the judgment debtor’s spouse, resided on the date the judgment creditor’s lien attached to the dwelling and through the date the court determines the dwelling qualifies as a homestead. (Code Civ. Proc., § 704.710(c).)
- 7) Permits a judgment creditor to seek, and the court to grant, an order requiring the sale of a judgment debtor’s homestead in order to satisfy an unpaid money judgment. (Code Civ. Proc., §§ 699.710, 701.510, 704.720, 704.740.)
- 8) Requires a judgment creditor seeking the sale of a judgment debtor’s primary place of residence to submit an application, made under oath, describing the dwelling and containing information relating to whether the residence is a homestead and whether there are any other encumbrances on the property. (Code Civ. Proc., § 704.760.)

- 9) Provides judgment debtors with a “homestead exemption,” which permits a judgment debtor to retain a certain amount of the proceeds from the sale of their homestead, when the court orders that the homestead must be sold to satisfy an unpaid money judgment. (Code Civ. Proc., § 704.020.)
- 10) Sets the homestead exemption at differing amounts, depending on the circumstances of the judgment debtor:
  - a) If the homeowner or spouse is 65 years or older; has a mental disability that prevents them from participating in “substantial gainful employment”; or is 55 years or older with an annual income of \$25,000 if single, or \$35,000 if married, the exemption is \$175,000. (Code Civ. Proc., § 704.730(a)(3).)
  - b) If the judgment debtor is a member of a “family unit” and at least one member of the family unit owns no interest in the homestead or owns only a community property interest, the exemption is \$100,000. (Code Civ. Proc., § 704.730(a)(2).)
  - c) For all other persons, the exemption is \$75,000. (Code Civ. Proc., § 704.730(a)(1).)
- 11) Puts certain narrow limitations on when a judgment creditor may compel the sale of a judgment debtor’s home:
  - a) If, in response to the court-ordered sale, there is no bid for the homestead that exceeds the applicable homestead exemption plus the amount necessary to satisfy all liens and encumbrances on the property, including the judgment lien, the homestead cannot be sold and the judgment creditor seeking the sale cannot reapply for another sale for a period of one year. (Code Civ. Proc., § 704.800(a).)
  - b) If, in response to the court-ordered sale, there is no bid for the sale that is 90 percent or more of the fair market value of the home, the homestead cannot be sold unless the court approves the lower bid. (Code Civ. Proc., § 704.800(b).)
- 12) Requires a judgment creditor to submit, as part of the application for the sale of a judgment debtor’s primary place of residence, a statement that the dwelling is a homestead, a statement of the amount of the homestead exemption, and a statement of the amount of any liens or encumbrances on the dwelling. (Code Civ. Proc., § 704.760.)

This bill:

- 1) Defines “consumer debt” as debt incurred by an individual primarily for personal, family, or household purposes.
- 2) Prohibits a judgment creditor from executing a judgment lien on a judgment debtor’s principal place of residence when the underlying debt is a consumer debt, unless the debt was secured by the judgment debtor’s principal place of residence at the time it was incurred.

- 3) Exempts certain types of debt from the general prohibition on forced sales for consumer debts, thereby allowing forced sales for the following types of debt (subject to the homestead exemption):
  - a) Unpaid wages or employment benefits.
  - b) Unpaid taxes.
  - c) Unpaid child support.
  - d) Unpaid spousal support.
  - e) Unpaid fines and fees owed to government units.
  - f) Unpaid tort judgments.
  - g) Unpaid debts owed to a financial institution, other than student loan debt, if the judgment debt was greater than \$75,000 when entered and is greater than \$75,000 at the time the judgment creditor seeks to enforce the judgment lien.
    - i. Defines "financial institution" using the definition in Code of Civil Procedure section 680.200: "a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business."
    - ii. Defines "student loan debt" as "debt based on any loan made to finance postsecondary education expenses, including tuition, fees, supplies, room and board, transportation, and personal expenses," and includes debt based on a loan made to refinance a student loan. The term does not include student loan debt secured by the debtor's principal place of residence at the time it was incurred.
- 4) Provides that the amount of the exception for unpaid debts owed to a financial institution will be adjusted every three years, starting in 2022, by the Judicial Council based on the change in the California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics.
- 5) Requires a judgment creditor to include, as part of the application for a sale of the judgment debtor's primary place of residence made under oath, a statement that the debt is either not a consumer debt or, if it is a consumer debt, is secured by the debtor's place of residence or one of the exemptions applies. If an exemption does apply, the application must list the specific exemption and, if the debt is owed to a financial institution, the statement must also provide the dollar amount of the original judgment on which the lien is based.

## COMMENTS

### 1. Author's comment

According to the author:

Recently, judgment creditors have been utilizing the option of seeking foreclosure on homes for judgments based on consumer debt, often for just a few thousand dollars. Foreclosing on homes due to small amounts of debt is disruptive to low-income communities, and this method of collection is especially problematic considering our current housing and homelessness crises. In order to protect against the threat of homelessness, AB 2463 will prevent foreclosures of a person's home if the underlying judgement lien is based on consumer debt that was not secured by the individual's principal place of residence at the time the debt was incurred. This bill will provide assurance that experiencing financial strain does not mean families will lose their homes.

### 2. Under current law, creditors can force Californians to sell their homes to satisfy unsecured consumer debts

In layperson's terms, it is understood that there is a difference between a "secured" and an "unsecured" debt. The former pledges something of value as collateral for a debt, which can be collected upon if the borrower defaults on their obligations. The latter requires no collateral pledge, so if the borrower defaults, the creditor must seek collection through other means. One of the most common types of secured consumer debts are home loans, in which the home is the collateral for the mortgage. With a home loan secured by the home, the borrower is clearly on notice that, in the case of default, the home can be foreclosed on and sold.

What is less understood is that, under California law, a consumer can be forced to sell their home to satisfy an *unsecured* consumer debt – or a debt secured by *other property* – as well. While the process for forcing a home sale to satisfy a general consumer debt is not as straightforward as the nonjudicial foreclosure process for mortgages secured by a home,<sup>1</sup> California permits a creditor who has obtained a judgment against a debtor to apply for a forced sale of the debtor's principal place of residence, even where the home was never offered as collateral.<sup>2</sup> The only limit on a creditor's right to force a home sale for any consumer debt is the "homestead exemption."

The "homestead exemption" does not, as the name implies, completely exempt a homestead – a.k.a. the judgment debtor's principal place of residence – from a forced sale. Instead, the homestead exemption permits a forced home sale as long as the value of the judgment debtor's principal place of residence is sufficient to cover the

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<sup>1</sup> See Civ. Code, §§ 2924-2924I.

<sup>2</sup> Code Civ. Proc., §§ 699.710, 701.510, 704.720, 704.740.

outstanding debt and all other liens, while still returning a specified amount to the judgment debtor.<sup>3</sup> At the low end, the homestead exemption requires the debtor recover only \$75,000 in equity; debtors living in a “family unit” must recover \$100,000; and, at the high end, homeowners over 65 or with certain disabilities must recover \$175,000 before a forced home sale can proceed.<sup>4</sup> The Judicial Council is tasked with adjusting the homestead exemption for inflation every three years, but the Legislature must approve the adjustment, and the last increase was in 2010.<sup>5</sup> And while a court has no discretion to prevent a forced home sale or require a higher homestead exemption, the court may, at the request of the judgment creditor, approve a forced home sale for *less* than the fair market value of the home.<sup>6</sup>

At the end of 2019, an estimated 26 percent of adults in California had at least one debt in collection.<sup>7</sup> This number has almost certainly increased since the COVID-19-induced recession, and will likely continue to increase.<sup>8</sup> At the same time, housing in California remains some of the most expensive in the country.<sup>9</sup> As of 2015, more than 4 in 10 households had housing costs that exceeded 30 percent of their income – another troubling statistic likely to increase with the COVID-19 crisis.<sup>10</sup> Yet, because the median home price is over \$600,000,<sup>11</sup> many consumers’ homes will have equity in excess of the relatively small homestead exemptions, allowing forced home sales to further increase housing insecurity.

3. In practice, consumers are forced to sell their homes for debts of a few thousand dollars, and many consumers do not receive adequate procedural protections

While the homestead exemption establishes a floor for how much equity a consumer must have in their home before it is sold, there is no restriction on how large a debt must be before a judgment creditor can force a home sale. This means a consumer with sufficient equity – as low as \$75,000 – can be forced to sell their home for *any* unsecured consumer debt, no matter how small. Additionally, the likelihood that a consumer will

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<sup>3</sup> *Id.*, § 704.020.

<sup>4</sup> *Id.*, § 704.730(a)(1)-(3).

<sup>5</sup> *Id.*, § 705.150(c); see AB 1046 (Stats. 2009, Ch. 499, § 2) (most recent increase in homestead exemption).

<sup>6</sup> Code Civ. Proc., § 704.800(b).

<sup>7</sup> Urban Institute, *Debt in America: An Interactive Map* (Dec. 17, 2019) available at [https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct\\_debt\\_collections&state=6](https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=6) [last visited July 20, 2020].

<sup>8</sup> See Botts, *How COVID is deepening California’s income inequality in 5 charts*, Cal Matters (July 20, 2020), <https://calmatters.org/california-divide/2020/07/california-covid-deepening-income-inequality-data/> [last visited July 20, 2020].

<sup>9</sup> Buhayar and Cannon, *How California Became America’s Housing Market Nightmare*, Bloomberg (Nov. 6, 2019), <https://www.bloomberg.com/graphics/2019-california-housing-crisis/> [last visited July 20, 2020] (median home price in California is more than twice the national level).

<sup>10</sup> Hutchful, *The Racial Wealth Gap: What California Can Do About a Long-Standing Obstacle to Shared Prosperity*, California Budget & Policy Center (Dec. 2018), <https://calbudgetcenter.org/resources/the-racial-wealth-gap-what-california-can-do-about-a-long-standing-obstacle-to-shared-prosperity/> [last visited August 5, 2020] (hereafter *The Racial Wealth Gap*).

<sup>11</sup> *Ibid.*

be unable to satisfy an outstanding judgment without a forced home sale increases as time goes on because, in addition to owing the amount of the judgment, a judgment debtor is liable for the costs of collection plus post-judgment interest.<sup>12</sup> Given that a judgment lien lasts for ten years and can be renewed indefinitely, the added costs and interest can be larger than the underlying judgment itself – which, perversely, may incentivize debt collectors to delay collections.<sup>13</sup> Furthermore, there is no judicial check on forced home sales: the court’s role is limited to determining whether the sale is likely to return sufficient funds to satisfy the homestead exemption and any liens on the home, including the outstanding judgment.<sup>14</sup> The overall result is that forced home sales can be used as a cudgel against consumers with insubstantial consumer debts.

While it has long been possible for a judgment creditor to force a home sale to collect on a small consumer debt, sponsor CLICC and a coalition of 19 other supporters (collectively, “the Coalition”), explain that the practice of using forced home sales to collect on small consumer debts has only recently become widespread. Supporter National Housing Law Project concurs:

Until recently, the recording of a lien [on a judgment debtor’s primary place of residence] was primarily a passive method of debt collection. However, judgment creditors have begun using foreclosure of defendants’ homes in cases involving credit card debt and medical debt judgments for as little as a few thousand dollars. This method of collection is expensive, disruptive to communities, and is especially problematic considering California’s current housing crisis.

A recent report by the East Bay Community Law Center (EBCLC) confirms that forced home sales are no longer reserved for extreme cases, but instead are frequently used (or threatened) to satisfy extremely small debts.<sup>15</sup> EBCLC reviewed records obtained from sheriffs’ departments reflecting when a business began the forced sale process to collect on an unsecured consumer debt.<sup>16</sup> Over half the forced home sale cases began with a judgment of less than \$10,000, and one-fifth of the cases began with a judgment of less than \$5,000 – all of which account for added court costs, attorney fees, and interest, meaning the underlying debts were even lower.<sup>17</sup> The smallest judgment in which a

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<sup>12</sup> See Code Civ. Proc., § 695.210.

<sup>13</sup> See *id.*, §§ 683.020, 683.110(a), 683.120, 683.130, 683.180, 697.030, 697.310.

<sup>14</sup> See *id.*, § 704.800.

<sup>15</sup> East Bay Community Law Center, *Unsecured Debts, Insecure Communities* (April 2020), pp. 1-2 (hereafter *Unsecured Debts, Insecure Communities*), available at [http://ebclc.org/wp-content/uploads/2020/03/Forced-Sales-of-Homes\\_Unsecured-Debts-Insecure-Communities-EBCLC-Report-1.pdf](http://ebclc.org/wp-content/uploads/2020/03/Forced-Sales-of-Homes_Unsecured-Debts-Insecure-Communities-EBCLC-Report-1.pdf) [last visited August 7, 2020].

<sup>16</sup> *Id.* at pp. 14-15. Several counties did not provide records or refused to do so, so the absolute number of consumers subject to forced home sales in the State is likely much larger.

<sup>17</sup> *Id.* at p. 19. In many cases, the judgment creditor’s delay in enforcing the judgment led the amount owed to increase to over twice the original debt – essentially rewarding the creditor for their own procrastination. (See *id.* at pp. 26-27, 29-30, 32-34.)

forced home sale was sought was for \$1,089.45, representing an underlying debt of only \$625.16, plus the additional costs of filing and serving the deficiency lawsuit.<sup>18</sup>

In theory, a consumer will have at least some notice a forced home sale is possible – the first step in obtaining a judgment lien is a collections action in which the creditor names a debtor and receives a judgment in the amount of the unpaid debt. In practice, however, collections actions almost always end in default, i.e., the consumer does not appear: one study showed that, in 85 percent of collections actions, the defendant filed no answer,<sup>19</sup> meaning the plaintiff could proceed to a default judgment without *any* defense from the consumer. Unfortunately, many consumers never even receive notice that they were named in a collections action: instances of “sewer service,” or process servers failing to actually serve consumers with notice of the collections action, are all too common.<sup>20</sup> And even where service is accomplished, many consumers cannot afford legal counsel or are otherwise unaware of their rights in the face of a collections action, resulting in the entry of judgment for an unmeritorious claim. One study found that, in cases where default judgments were entered against consumers, more than half of the consumers had good faith defenses to collection, and more than 70 percent had defenses to the litigation.<sup>21</sup>

Furthermore, the nature of the forced home sale process can leave consumers far worse off than if they were to sell their homes on the open market (or if they were allowed to remain in their homes). Forced home sales are not conducted via the standard process of putting a home on the market and allowing bids to come in after multiple showings; instead, forced home sales are conducted via auction.<sup>22</sup> For multiple reasons – such as the inability of a buyer to inspect the home before bidding, and the seller’s incentive to rush the sale rather than spend money publicizing it – these auctions are likely to lead to below-market bids.<sup>23</sup> Studies show that auctioned real estate can sell for up to 37 percent less than privately sold property.<sup>24</sup> A forced sale will automatically go forward with a bid of only 90 percent of the market value of the home;<sup>25</sup> the 10 percent loss in equity is borne by the consumer, and can represent a substantial loss over and above the loss of the home. Moreover, because the court is authorized to approve a bid that is less than 90 percent of the market value as long as it covers the homestead exemption and outstanding liens,<sup>26</sup> a sale can result in a devastating loss of equity that could dwarf

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<sup>18</sup> *Id.* at p. 19.

<sup>19</sup> Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers* (2014) 26 Loyola Consumer L. Rev. 179, 208.

<sup>20</sup> *Unsecured Debts, Insecure Communities*, *supra*, fn. 15, pp. 8, 22.

<sup>21</sup> Spector, *Litigating Consumer Debt Collection: A Study*, Banking & Financial Services Policy Report (June 2012), p. 3.

<sup>22</sup> See Code Civ. Proc., §§ 701.570 (auction procedure), 704.780 (incorporating sections setting forth procedures).

<sup>23</sup> Burkhardt, *Fixing Foreclosure*, 36 Yale L. & Pol’y Rev. 315, 326.

<sup>24</sup> *Id.* at pp. 326-327.

<sup>25</sup> Code Civ. Proc., § 704.800(b).

<sup>26</sup> *Ibid.*



the underlying debt and leave the consumer disproportionately worse off. Evidence suggests some courts routinely approve such sub-market-value sales.<sup>27</sup> This harm is compounded by the additional costs the consumer must incur in connection with a forced home sale, such as moving costs, and the nonmonetary costs, such as family upheaval.

A debt collector does not have to go through with a forced home sale in order to harm a consumer. The mere threat of a forced home sale is also a potent weapon. It would be virtually impossible to compile data on how many forced home sales *did not* happen because a debtor was able to scrape together enough money to satisfy the debt, but anecdotal evidence suggests that the threat of a forced sale can lead consumers to take on further debt or make long-term detrimental financial commitments in order to forestall a sale.<sup>28</sup>

With the COVID-19-induced recession, massive unemployment, and rising food prices, there are fewer good options than ever for people confronted with the possibility of a forced home sale. As the Coalition explains:

[C]reditors routinely threaten to take the family home to collect alleged debts, prompting low-income homeowners such as seniors and people with disabilities to skip necessities like food and medicine in order to pay these debts that had nothing to do with their homes.

Finally, as the Coalition notes, small-debt home foreclosure is contributing to the wealth-stripping of California's most vulnerable communities. In particular, evidence shows that forced home sales, and threats of forced home sales, are made disproportionately in neighborhoods made up predominantly of people of color.<sup>29</sup> Given that people of color are already less likely to own a home than whites in California,<sup>30</sup> the unequally applied practice of forced home sales can only exacerbate the home ownership gap, and the wealth gap, further.

#### 4. This bill will prevent forced home sales for consumer debts in most circumstances

AB 2643 would eliminate the practice of permitting judgment creditors to force a home sale to satisfy a consumer debt, except in limited circumstances. This is not a novel proposition: at least seven states already prohibit forced home sales in most circumstances.<sup>31</sup> This bill does not affect other means available to creditors for collecting on judgment debts, such as wage garnishment, seizures of the judgment debtor's other property (including homes other than the principal place of residence), or seizing funds

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<sup>27</sup> *Unsecured Debts, Insecure Communities*, *supra*, fn. 15, p. 39.

<sup>28</sup> *See id.* at pp. 28-29, 36.

<sup>29</sup> *Id.* at p. 21.

<sup>30</sup> *The Racial Wealth Gap*, *supra*, fn. 10.

<sup>31</sup> Ark. Code, § 16-66-210; D.C. Code, § 15-501; Fla. Const. Art. X, § 4; Iowa Code, § 561.16; Kan. Stats., § 60-2301; 31 Okla. Stats., § 1; S.D.C.L., § 43-31-1; Tex. Const., Art. XVI, § 50; Tex. Prop. Code, § 41.001.

from the judgment debtor's bank account. As set forth above, there are legitimate policy reasons to prohibit forced home sales as a tool for collecting consumer debts. And, as explained below, this bill appears well crafted to accomplish the goals of moving the state away from current law allowing a consumer's home to be *de facto* security for every debt they incur.

The bill's definition of "consumer debt" is "debt incurred by an individual primarily for personal, family, or household purposes." This definition is consistent with many other California statutes governing consumer transactions,<sup>32</sup> indicating the term is appropriately tailored to encompass the consumer debts that are the focus of this bill.<sup>33</sup>

In order to balance the interests of creditors with the interests of consumers, this bill exempts a number of consumer debts from its prohibition on forced home sales. Most straightforwardly, the bill exempts consumer debts secured by the debtor's principal place of residence – a reasonable exemption, given that the consumer voluntarily agreed to offer their principal place of residence as security for the debt. This exemption thus ensures that mortgages, HOA liens, and other debts secured by the principal place of residence will be unaffected.

The bill also exempts wages and employment benefits, taxes, child support, spousal support, government fines and fees, and tort debts from its scope, permitting forced home sales in order to satisfy these debts. Given that these types of debt relate to legal obligations, not debts incurred "primarily for personal, family, or household purposes," it is unclear whether these debts qualify as consumer debts in the first place. Nevertheless, it seems prudent to enumerate these debts as exemptions to the general prohibition on home sales, to prevent ambiguity in the scope of the bill.

The final exemption is a carve-out for high-priced debts owed to financial institutions, except for student loans. Specifically, the bill provides an exemption for consumer debt owed to a financial institution at the time of execution, which both (1) exceeded \$75,000 at the time of entry, and (2) exceeds \$75,000 at the time of enforcement. The bill incorporates the Code of Civil Procedure's existing definition of "financial institution" for purposes of enforcing judgments,<sup>34</sup> which should ensure consistency of application. This financial-institution exemption expressly does *not* include student loans unless the loan is secured by the borrower's home, meaning even if a consumer owes more than

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<sup>32</sup> See, e.g., Bus. & Prof. Code, § 302(c) (Consumer Affairs Act); Civ. Code, §§ 1761(d) (Consumers Legal Remedies Act), 1799.201 (Consumer Contract Awareness Act); Code Civ. Proc., § 116.225 (small claims jurisdiction in relation to forum selection clauses in consumer transactions); Cal. U. Com. Code, § 9102(23)-(26) (definitions of consumer goods and transactions).

<sup>33</sup> The version of the bill analyzed by the Assembly Judiciary Committee (Version 97) limited the ban on forced home sales to "unsecured consumer debts." This language created a loophole that would have allowed forced home sales for debt secured by property *other* than the home, no matter how small the debt. The current version therefore clarifies that only consumer debts *secured by the home* can be collected on via a forced home sale (unless they fall into one of the other exemptions).

<sup>34</sup> See Code Civ. Proc., § 680.200.

\$75,000 in unsecured student debt to a financial institution, the financial institution will not be able to force a home sale in order to satisfy the debt.

This exemption for high-value consumer debts appears to balance reasonably the interests of financial institutions in recouping monies owed and the interests of consumers in not being subjected to a forced home sale for a small amount of debt. The exemption to the exemption, for student loan debt, likewise appears reasonable. In light of the exploding cost of higher education and the crashing economy, many students who took out loans in good faith are likely to find themselves unable to repay them, and forcing already-disadvantaged students to sell their homes seems to be an unduly extreme measure.

The bill provides that the \$75,001 floor for lien sales on debts owed to financial institutions will be adjusted for inflation every three years, ensuring that the floor does not grow too small or too large. The bill tasks the Judicial Council with making the adjustment based on the change in the California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the prior three-year period, starting in 2022. Given that the Judicial Council already makes inflation-adjustments for other collection exemptions in the same manner and on the same time schedule as set forth in this bill,<sup>35</sup> the additional cost of making the triannual inflation adjustment of the \$75,001 floor should be nominal.

Finally, in order to ensure a level of procedural protection for consumers, this bill adds a requirement that creditors seeking to enforce a judgment lien on a home must inform the court, under oath, that the forced home sale is not prohibited under this bill's provisions. Specifically, the judgment creditor must attest that the debt is either a non-consumer debt or a consumer debt; and if it is a consumer debt, the judgment creditor must attest which exemption applies (or which exemptions apply) to permit the forced home sale. If the judgment creditor is relying on the exemption for debts owed to a financial institution, the judgment creditor must also provide the dollar amount of the original judgment on which the lien is based. This measure should provide some protection for homeowners, who must be given notice of the judgment creditor's application for a forced home sale and would be able to contest the information set forth in the statement.<sup>36</sup> The court's role in granting a home sale is limited to determining whether the home qualifies for sale, but if presented with evidence from the homeowner that the debt arose from a covered consumer debt, the sale could not go forward.<sup>37</sup>

The Committee has not received evidence or argument suggesting this bill would detrimentally affect consumer access to credit or interest rates.

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<sup>35</sup> See *id.*, § 703.150; see, e.g., Code Civ. Proc. §§ 703.140, 704.010 et seq.

<sup>36</sup> See *id.*, § 704.770.

<sup>37</sup> See *id.*, § 704.780(b).

### SUPPORT

California Low Income Consumer Coalition (sponsor)  
Bet Tzedek  
California Asset Building Coalition  
California Association of Realtors  
California Reinvestment Coalition  
Californians for Economic Justice  
Center for Responsible Lending  
Centro Legal de la Raza  
Consumer Federation of California  
Consumer Reports  
Disability Rights California  
East Bay Community Law Center  
Elder Law & Advocacy  
Housing & Economic Rights Advocates  
Justice & Diversity Center of the Bar Association of San Francisco  
Legal Society of San Bernardino  
National Consumer Law Center  
New Economics for Women  
National Housing Law Project  
Prasad Krishnamurthy, J.D., Ph.D., University of California, Berkeley, School of Law  
Public Law Center  
Riverside Legal Aid  
University of California, Irvine, Consumer Law Clinic

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: SB 898 (Wieckowski, 2020) updates the value of certain judgment exemptions to match the Judicial Council's current adjusted amounts, and adds an exemption for monies in California ScholarShare accounts (subject to a limitation on contributions made in the two years prior to a debtor's petition for bankruptcy). SB 898 is pending in the Assembly Judiciary Committee.

#### Prior Legislation:

SB 1075 (Wieckowski, 2018) would have prohibited a judgment creditor to recover any costs of collection for property, unless the property was applied to satisfaction of the judgment, when (1) the judgment creditor did not object to the application of a judgment exemption for that property, or (2) a court determined a judgment exemption applied to that property. SB 1075 was held in the Senate Judiciary Committee.

SB 308 (Wieckowski, 2015) would have modified the homestead exemption, created an unlimited exemption for specified agricultural property, and would have prevented the bankruptcy status of a debtor from constituting a default on a contract for a motor vehicle. The bill passed the Senate and was amended in the Assembly to remove the motor vehicle contract provisions, but failed passage on the Assembly floor.

AB 198 (Wieckowski, 2013) would have increased the homestead exemption and various other judgment exemptions, and created additional exemptions. The bill was held on suspense in the Assembly Appropriations Committee.

AB 929 (Wieckowski, Ch. 678, Stats. 2012) increased the homestead exemption for persons 55 or older and increased the dollar value of certain other judgment exemptions.

**PRIOR VOTES:**

Assembly Floor (Ayes 68, Noes 0)

Assembly Judiciary Committee (Ayes 8, Noes 0)

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