AMENDED IN ASSEMBLY SEPTEMBER 4, 2015 AMENDED IN ASSEMBLY AUGUST 17, 2015 AMENDED IN ASSEMBLY JULY 6, 2015 AMENDED IN SENATE MAY 5, 2015 AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 308

Introduced by Senator Wieckowski

February 23, 2015

An act to-amend Section 2983.3 of the Civil Code, and to amend Sections 703.140, 704.010, 704.113, 704.115, 704.720, 704.730, and 704.960 of, *and* to add Sections 704.085, 704.111, and 704.165 to, the Code of Civil Procedure, and to amend Section 22329 of the Financial Code, relating to bankruptcy.

LEGISLATIVE COUNSEL'S DIGEST

SB 308, as amended, Wieckowski. Debtor exemptions.

Existing law prohibits the seller or holder of a conditional sale contract for a motor vehicle from accelerating the maturity of any part or all of the amount due under the contract or repossessing the vehicle in the absence of default in the performance of any of the buyer's obligations under the contract.

This bill would provide that neither the act of filing a bankruptcy petition by the buyer or other person 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

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part or all of the amount due under the contract or for repossessing the motor vehicle.

Existing law identifies various types of property of a judgment debtor that are exempt from the enforcement of a money judgment. Existing law provides that property described in statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure, and property described in statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment. These general exemptions are available to a debtor in a federal bankruptcy case, whether a money judgment is being enforced by execution sale or other procedure, unless the debtor elects certain alternative exemptions.

Existing law requires the Judicial Council to, every 3 years, adjust the amount of the exemptions applicable to exempt property based on the change in the annual California Consumer Price Index for All Urban Consumers, and to prepare conforming forms for those adjustments.

This bill would increase the statutory amounts of various exemptions to reflect the amounts of the exemptions as adjusted by the Judicial Council effective April 1, 2013.

Existing law authorizes a husband and wife who jointly file a bankruptcy petition to jointly elect to utilize the general exemptions or the alternative exemptions, but not both. The general exemptions are applicable if a bankruptcy petition is filed individually, and not jointly, for a husband or a wife, except that the husband and wife may jointly waive in writing their right to claim, during the period the case commenced by filing the petition is pending, the general exemptions and instead elect to utilize the alternative exemptions.

This bill would provide that a joint waiver is not required from a debtor who is separated from his or her spouse as of the date the bankruptcy petition 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, as specified.

Existing law includes an alternative exemption for the debtor's right to receive 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 several specified conditions apply, including that the plan or contract does not qualify under specified provisions of the federal Internal Revenue Code of 1986.

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This bill would provide that a plan or contract covered by this alternative exemption would be exempt even if it did not qualify under the specified provisions of the federal Internal Revenue Code of 1986 so long as the sole basis for the failure to qualify is a technical defect.

Existing law includes alternative exemptions for the debtor's right to receive, or property that is traceable to, a payment on account of the wrongful death of an individual of whom the debtor was a dependent and a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death.

This bill would make these exemptions applicable, as well, to payments regarding an individual of whom the debtor was a spouse.

Existing law includes an alternative exemption for the debtor's right to receive, or property that is traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent. Existing law sets this amount as \$25,575, as adjusted by the Judicial Council.

This bill would make this exemption applicable, as well, to a payment on account of personal bodily injury of the spouse of the debtor.

Existing law includes an alternative exemption for the debtor's right to receive, or property that is traceable to, a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent to the extent reasonably necessary for the support of the debtor and a dependent of the debtor.

This bill would make this exemption applicable, as well, to a payment regarding an individual of whom the debtor is or was a spouse, and would provide that the exemption applies to the extent reasonably necessary for the support of the debtor and a spouse or dependent of the debtor.

Existing law provides that vacation credits, as defined, are exempt from enforcement of a money judgment without making a claim.

This bill would delete the definition of "vacation credits" set forth in these provisions and expand this general exemption to also include accrued or unused vacation pay, sick leave, and family leave. The bill also would add an alternative exemption for the debtor's right to receive these expanded assets.

Existing law exempts any combination of aggregate equity in motor vehicles, the proceeds of an execution sale of a motor vehicle, and the proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle. Existing law sets this amount of this SB 308 —4—

exemption, as adjusted by the Judicial Council, at \$2,900. Existing law includes an alternative exemption for up to \$5,100, as adjusted by the Judicial Council, of the debtor's interest in one or more motor vehicles.

This bill would increase the amount of the general and alternative exemption for motor vehicle equity to \$6,000, and make conforming changes.

This bill would provide that the aggregate interest of a debtor who is engaged in business, not to exceed \$5,000 in cash or deposit accounts, accounts receivable, and inventory of the business is exempt.

Existing law includes an alternative exemption for the debtor's right to receive alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

This bill would provide that these assets are exempt, thereby adding a general exemption matching the existing alternative exemption.

Existing law provides that all amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt. Existing law defines "private retirement plan" to include self-employed retirement plans and individual retirement annuities or accounts provided for in the federal Internal Revenue Code of 1986, including individual retirement accounts qualified under specified provisions of that code.

This bill would expand this exemption to also include individual retirement accounts that do not qualify under those specified provisions on the basis of a technical defect alone.

Existing law provides that various causes of action and awards of damages or settlements arising out of those actions are exempt to varying extent, as specified.

This bill would provide that a cause of action arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt without making a claim, except as provided in specified statutory provisions, and an award of damages or a settlement arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. The bill also would add identical alternative exemptions in this regard.

Existing law provides that the proceeds of sale or of insurance or other indemnification for damage or destruction of a homestead, the _5_ SB 308

proceeds received as compensation for a homestead acquired for public use, or the proceeds from a voluntary sale of a declared homestead, are exempt in the amount of the homestead exemption provided in a specified statute for a period of 6 months after the time the proceeds are actually received by the judgment debtor, except as provided.

This bill would specify that, in a case under Title 11 of the United States Code, regardless of whether the sale is voluntary or involuntary, the expiration of the six-month 6-month period at any time after the filing of the case does not terminate the exempt status of the homestead or its proceeds.

Existing law provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt and prescribes that the amount of the homestead exemption is either \$75,000, \$100,000, or \$175,000, depending on certain characteristics of the homestead's residents.

This bill would increase these exemptions to \$100,000, \$150,000 \$150,000, or \$300,000, respectively.

Existing law provides that, in the absence of default in the performance of a borrower's obligations under a loan secured in whole or in part by a lien on a motor vehicle, as defined, a licensee may not accelerate the maturity of any or all of the amount due on the loan or repossess the motor vehicle.

This bill would provide that neither the act of filing a bankruptey petition by the borrower or other person liable on the loan nor the status of either of those persons as a debtor in bankruptey 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- SECTION 1. Section 2983.3 of the Civil Code is amended to read:
- 3 2983.3. (a) (1) In the absence of default in the performance
- 4 of any of the buyer's obligations under the contract, the seller or
- 5 holder may not accelerate the maturity of any part or all of the
- 6 amount due thereunder or repossess the motor vehicle.

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(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 person 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 his or her 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 nonoceasional 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

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1 federal, state, or local agency or authority pursuant to federal, state, 2 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) Where 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) Where 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) Where 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

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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) Where 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 incurred, 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 shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) of the Financial Code.

SEC. 2.

SECTION 1. 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:

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(1) If a husband and wife 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 husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife 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 separated from his or her 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-five thousand five hundred seventy-five dollars (\$25,575) 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 six thousand dollars (\$6,000) in value, in one or more motor vehicles.
- (3) The debtor's interest, not to exceed six hundred fifty dollars (\$650) 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.

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(4) The debtor's aggregate interest, not to exceed one thousand five hundred twenty-five dollars (\$1,525) 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 in value one thousand three hundred fifty dollars (\$1,350) plus any unused amount of the exemption provided under paragraph (1), in any property.
- (6) The debtor's aggregate interest, not to exceed seven thousand six hundred twenty-five dollars (\$7,625) 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 unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
- (8) The debtor's aggregate interest, not to exceed in value thirteen thousand six hundred seventy-five dollars (\$13,675), in any accrued dividend or interest under, or loan value of, any unmatured 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 or a dependent of the debtor.
 - (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.

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(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, as amended, on a basis other than a technical defect alone.

- (F) Vacation credits or accrued, or unused, vacation pay, sick leave, or family leave.
- (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 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.
- (C) 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.
- (D) A payment, not to exceed twenty-five thousand five hundred seventy-five dollars (\$25,575), on account of personal bodily injury of the debtor, the spouse of the debtor, or an individual of whom the debtor is a dependent.
- (E) 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 a spouse or dependent of the debtor.
- (12) (A) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt without making a claim.
- (B) An award of damages from or a settlement arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.
 - SEC. 3.

- 36 SEC. 2. Section 704.010 of the Code of Civil Procedure is 37 amended to read:
- 704.010. (a) Any combination of the following is exempt in the amount of six thousand dollars (\$6,000):
 - (1) The aggregate equity in motor vehicles.

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(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 six thousand dollars (\$6,000) 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.

- 20 SEC. 3. Section 704.085 is added to the Code of Civil Procedure, to read:
 - 704.085. The aggregate interest of a debtor who is engaged in a business, not to exceed five thousand dollars (\$5,000), in cash or deposit accounts, accounts receivable, and inventory of the business is exempt.

SEC. 5.

- SEC. 4. Section 704.111 is added to the Code of Civil Procedure, to read:
- 29 704.111. Alimony, support, and separate maintenance, to the 30 extent reasonably necessary for the support of the debtor and any 31 dependent of the debtor, are exempt.

SEC. 6.

- 33 SEC. 5. Section 704.113 of the Code of Civil Procedure is 34 amended to read:
- 35 (a) All vacation credits or accrued, or unused, 704.113. 36 vacation pay, sick leave, or family leave is exempt without making 37 a claim.
- 38 (b) Amounts paid periodically or as a lump sum representing 39 vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or 40

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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.

- SEC. 6. Section 704.115 of the Code of Civil Procedure is amended to read:
- 704.115. (a) As used in this section, "private retirement plan" means:
- (1) Private retirement plans, including, but not limited to, union retirement plans.
- (2) Profit-sharing plans designed and used for retirement purposes.
- (3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code and accounts that do not qualify on the basis of a technical defect alone, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.
- (b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.
- (c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:
- (1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.
- (2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

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(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

- (e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.
- (f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of the periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010). To the extent a lump-sum distribution from an individual retirement account is treated differently from a periodic distribution under this subdivision, any lump-sum distribution from an account qualified under Section 408A of the Internal Revenue Code shall be treated the same as a lump-sum distribution from an account qualified under Section 408 of the Internal Revenue Code for purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment.

SEC. 8.

- 31 SEC. 7. Section 704.165 is added to the Code of Civil Procedure, to read:
 - 704.165. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt without making a claim.
 - (b) An award of damages from or a settlement arising out of or regarding the violation of any law relating to the judgment debtor's employment is exempt to the extent necessary for the support of

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the judgment debtor and the spouse and dependents of the judgmentdebtor.

SEC. 9.

- 4 SEC. 8. Section 704.720 of the Code of Civil Procedure is amended to read:
 - 704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.
 - (b) (1) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730 for a period of six months after the time the proceeds are actually received by the judgment debtor, except as provided in paragraph (2).
 - (2) If a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during the six-month period described in paragraph (1), the proceeds thereafter are not exempt.
 - (3) In a case under Title 11 of the United States Code, regardless of whether the sale is voluntary or involuntary, the expiration of the six-month period described in paragraph (1) at any time after the filing of the case shall not terminate the exempt status of the homestead or its proceeds.
 - (c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.
 - (d) (1) If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order.
 - (2) Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead.

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(3) Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

SEC. 10.

- SEC. 9. Section 704.730 of the Code of Civil Procedure is amended to read:
- 704.730. (a) The amount of the homestead exemption is one of the following:
- (1) One hundred thousand dollars (\$100,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).
- (2) One hundred fifty thousand dollars (\$150,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.
- (3) Three hundred thousand dollars (\$300,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:
 - (A) A person 65 years of age or older.
- (B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.
- (C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.
- (b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3) of

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subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

SEC. 11.

SEC. 10. Section 704.960 of the Code of Civil Procedure is amended to read:

704.960. (a) (1) If a declared homestead is voluntarily sold, the proceeds of sale are exempt in the amount provided by Section 704.730 for a period of six months after the date of the sale.

- (2) In a case under Title 11 of the United States Code, regardless of whether the sale is voluntary or involuntary, the expiration of the six-month period described in paragraph (1) at any time after the filing of such case shall not terminate the exempt status of the homestead or its proceeds.
- (b) If the proceeds of a declared homestead are invested in a new dwelling within six months after the date of a voluntary sale or within six months after proceeds of an execution sale or of insurance or other indemnification for damage or destruction are received, the new dwelling may be selected as a declared homestead by recording a homestead declaration within the applicable six-month period. In that case, the homestead declaration shall have the same effect as if it had been recorded at the time the prior homestead declaration was recorded.
- SEC. 12. 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

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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 his or her 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) Where 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) Where 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) Where the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower

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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) Where 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 (f) 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 (e) 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.