

Senate Bill No. 219

CHAPTER 202

An act to amend Sections 1204 and 1800 of the Code of Civil Procedure, relating to court proceedings.

[Approved by Governor July 27, 1999. Filed with
Secretary of State July 28, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 219, Peace. Court proceedings.

Existing law establishes the priority of allowed unsecured claims for specified wages, salaries, or commissions to the extent of \$2,000 for each individual and allowed unsecured claims for specified contributions to an employee benefit plan to the extent of the number of employees covered by the plan multiplied by \$2,000 less a specified amount.

This bill would limit claims for wages, salaries, or commissions to specified claims, and would increase the \$2,000 limit and multiple to \$4,300.

Existing law provides that an assignee of any general assignment for the benefit of specified creditors may recover any transfer or property of the assignor that meets certain requirements. Existing law exempts from this recovery a transfer of a security interest in property acquired by the assignor to the extent that the security interest secures new value, as specified, and is perfected within 10 days after the security interest attaches.

This bill would revise this exemption to include the above-described security interest that is perfected within 20 days after the security interest attaches.

This bill would also exempt a transfer to the extent that it was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, as specified.

This bill would also substantially incorporate the changes to Section 1204 of the Code of Civil Procedure proposed by SB 914, contingent upon that bill's prior enactment.

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

SECTION 1. Section 1204 of the Code of Civil Procedure is amended to read:

1204. When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him or her, or when any property



is turned over to the creditors of a person, firm, association or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

(a) Allowed unsecured claims, but only to the extent of four thousand three hundred dollars (\$4,300) for each individual or corporation, as the case may be, earned within 90 days before the date of the making of such assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first, for either of the following:

(1) Wages, salaries, or commissions, including vacation, severance and sick leave pay earned by an individual.

(2) Sales commissions earned by an individual, or by a corporation with only one employee, acting as an independent contractor in the sale of goods or services of the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding the date of the making of the assignment or the taking over of the property or the commencement of the proceeding or the date of the cessation of the debtor's business, whichever occurs first, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(b) Allowed unsecured claims for contributions to employee benefit plans arising from services rendered within 180 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only for each employee benefit plan, to the extent of the number of employees covered by the plan multiplied by four thousand three hundred dollars (\$4,300), less the aggregate amount paid to the employees under subdivision (a), plus the aggregate amount paid by the estate on behalf of the employees to any other employee benefit plan.

(c) The above claims shall be paid by the trustee, assignee or receiver before the claim of any other creditor of the assignor, insolvent, or debtor whose property is so turned over, and shall be paid as soon as the money with which to pay same becomes available. If there is insufficient money to pay all the labor claims in full, the money available shall be distributed among the claimants in proportion to the amount of their respective claims. The trustee, receiver or assignee for the benefit of creditors shall have the right to require sworn claims to be presented and shall have the right to refuse to pay any such preferred claim, either in whole or in part, if he or she has reasonable cause to believe that a claim is not valid but shall pay any part thereof that is not disputed, without prejudice to the claimant's rights, as to the balance of his or her claim, and withhold sufficient money to cover the disputed portion until the



claimant in question has a reasonable opportunity to establish the validity of his or her claim by court action, either in his or her own name or through an assignee.

(d) This section is binding upon all the courts of this state and in all receivership actions the court shall order the receiver to pay promptly out of the first receipts and earnings of the receivership, after paying the current operating expenses, such preferred labor claims.

SEC. 1.5. Section 1204 of the Code of Civil Procedure is amended to read:

1204. When any assignment, whether voluntary or involuntary, and whether formal or informal, is made for the benefit of creditors of the assignor, or results from any proceeding in insolvency or receivership commenced against him or her, or when any property is turned over to any creditor of a person, firm, association, or corporation, or to a receiver or trustee for the benefit of creditors, the following claims have priority in the following order:

(a) Allowed unsecured claims, but only to the extent of four thousand three hundred dollars (\$4,300) for each individual or corporation, as the case may be, earned within 90 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first, for either of the following:

(1) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.

(2) Sales commissions earned by an individual, or by a corporation with only one employee, acting as an independent contractor in the sale of goods or services of the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding the date of the making of the assignment or the taking over of the property or the commencement of the proceeding or the date of the cessation of the debtor's business, whichever occurs first, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(b) Allowed unsecured claims for contributions to employee benefit plans arising from services rendered within 180 days before the date of the making of the assignment or the taking over of the property or the commencement of the court proceeding or the date of the cessation of the debtor's business, whichever occurs first; but only for each employee benefit plan, to the extent of the number of employees covered by the plan multiplied by four thousand three hundred dollars (\$4,300), less the aggregate amount paid to the employees under subdivision (a), plus the aggregate amount paid by the estate on behalf of the employees to any other employee benefit plan.



(c) The preferred claims described in subdivisions (a) and (b) shall constitute a lien upon all property of the debtor, superior and prior to all other liens created by, or recognized by, the law of this state, to be paid by the trustee, assignee, creditor to whom the property is turned over, or receiver before the claim of any other creditor secured or unsecured of the assignor, insolvent, or debtor whose property is so turned over, and shall be paid as soon as the money with which to pay the claims becomes available. If there is insufficient money to pay all the labor claims in full, the money available shall be distributed among the claimants in proportion to the amount of their respective claims. The trustee, receiver, or assignee for the benefit of creditors shall have the right to require sworn claims to be presented and shall have the right to refuse to pay any preferred claim, either in whole or in part, if he or she has reasonable cause to believe that a claim is not valid but shall pay any part thereof that is not disputed, without prejudice to the claimant's rights, as to the balance of his or her claim, and withhold sufficient money to cover the disputed portion until the claimant in question has a reasonable opportunity to establish the validity of his or her claim by court action, either in his or her own name or through an assignee.

(d) This section is binding upon all the courts of this state and in all receivership actions the court shall order the receiver to pay promptly out of the first receipts and earnings of the receivership, after paying the current operating expenses, the preferred labor claims. In any action to enforce this section, reasonable attorney's fees and costs shall be awarded to the successful labor claimant.

SEC. 2. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) In this section:

(1) The term "insolvent" means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person's debts is greater than all of the person's property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person's creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership's debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership's property, exclusive of property of the kind specified in clause (i) subparagraph (A).

(ii) The sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner's separate debts.



(2) The term “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) The term “insider” means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, “relative” means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree; and an “affiliate” means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the assignor (excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote), or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) The term “judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.



(5) The term “new value” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) The term “receivable” means a right to payment, whether or not the right has been earned by performance.

(7) The term “security agreement” means an agreement that creates or provides for a security interest.

(8) The term “security interest” means a lien created by an agreement.

(9) The term “statutory lien” means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

(10) The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors (as defined in Section 493.010) may recover any transfer of property of the assignor:

(1) To or for the benefit of a creditor;

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made;

(3) Made while the assignor was insolvent;

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer; and

(5) That enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer:

(1) To the extent that the transfer was:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor; and

(B) In fact a substantially contemporaneous exchange;

(2) To the extent that the transfer was:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee;

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee; and



- (C) Made according to ordinary business terms;
- (3) Of a security interest in property acquired by the assignor:
 - (A) To the extent the security interest secures new value that was:
 - (i) Given at or after the signing of a security agreement that contains a description of the property as collateral;
 - (ii) Given by or on behalf of the secured party under the agreement;
 - (iii) Given to enable the assignor to acquire the property; and
 - (iv) In fact used by the assignor to acquire the property; and
 - (B) That is perfected within 20 days after the security interest attaches;
- (4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor:
 - (A) Not secured by an otherwise unavoidable security interest; and
 - (B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor;
- (5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of:
 - (A) Ninety days before the date of the making of the assignment.
 - (B) The date on which new value was first given under the security agreement creating the security interest; or
- (6) That is the fixing of a statutory lien.
- (7) That is payment to a claimant, as defined in Section 3085 of the Civil Code, in exchange for the claimant's waiver or release of any potential or asserted claim of lien, stop notice, or right to recover on a payment bond, or any combination thereof.
- (8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:
 - (A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case, the assignee may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed on to the spouse, former spouse, or child of the debtor.



(B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.

(d) An assignee of any general assignment for the benefit of creditors (as defined in Section 493.010), may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b) of this section. The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the transferee, if the transfer is perfected at, or within 10 days after, the time, except as provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10 days.

(C) Immediately before the date of the making of the assignment if the transfer is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the making of the assignment.

(g) An action by an assignee under this section must be commenced within one year after the making of the assignment.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1204 of the Code of Civil Procedure proposed by both this bill and SB 914. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 1204 of the Code of Civil Procedure, and (3) this bill



is enacted after SB 914, in which case Section 1 of this bill shall not become operative.

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