

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1119 (Wicks)  
Version: May 30, 2023  
Hearing Date: July 11, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Enforcement of judgments

**DIGEST**

This bill exempts judgment debtors from being subject to arrest and punishment for contempt for failing to appear at a debtor's examination in a case concerning consumer debt and provides a separate process for meeting the same goals of the in person examination.

**EXECUTIVE SUMMARY**

Frequently, when a court reaches a decision in a case, it orders the losing party (the judgment debtor) to give money to the winning party (the judgment creditor). If the judgment debtor does not pay up voluntarily, the judgment creditor has a few different options for trying to collect what it is owed. One option for the judgment creditor is to force the judgment debtor to attend a debtor examination: a court appearance under oath in which the judgment creditor may inquire about the debtor's property and obtain liens on that property to satisfy the outstanding debt. Existing law empowers the court to issue a warrant for the arrest of an individual debtor who does not appear.

This bill establishes a different system for obtaining this information when the underlying judgment is for consumer debt, debt arising from transactions primarily carried out for personal, family, or household purposes. Such debtors are not subject to arrest and punishment for contempt simply for failing to appear for the debtor examination. The bill affords them a different process to submit financial affidavits signed under penalty of perjury.

The bill is co-sponsored by the California Low-Income Consumer Coalition and the National Consumer Law Center. Support comes from various legal services entities, including Bet Tzedek Legal Services. The bill is opposed by the California Association of Judgment Professionals.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines “judgment creditor” as a person in whose favor a judgment is rendered. (Code Civ. Proc. § 680.240.)
- 2) Defines “judgment debtor” as a person against whom a judgment is rendered. (Code Civ. Proc. § 680.250.)
- 3) Defines “money judgment” as that part of a judgment which requires the payment of money. (Code Civ. Proc. § 680.270.)
- 4) Provides for enforceability of judgments in a civil action, including money judgements. (Code Civ. Proc. § 681.010.)
- 5) Provides that all property of a judgment debtor is subject to enforcement of a money judgment, unless specifically exempted from collection. (Code Civ. Proc. § 695.010.)
- 6) Provides statutory exemptions from collection in satisfaction of a money judgment. (Code Civ. Proc. § 703.010 et seq.)
- 7) Requires a court, upon application from a judgment creditor, to issue an order requiring the judgment debtor to appear before the court to furnish information to aid in enforcement of the money judgment, and requires the order to contain a notice to the judgment debtor stating that if the judgment debtor fails to appear, they may be subject to arrest and punishment for contempt of court and required to pay reasonable attorney fees incurred by the creditor. (Code Civ. Proc. § 708.110.)
- 8) Requires the judgment creditor to personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service shall be made in the manner specified. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court. (Code Civ. Proc. § 708.110(d).)
- 9) Authorizes the court, if an order requiring a person to appear for an examination was served, as provided, and the person fails to appear, to do either of the following:
  - a) Pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.
  - b) Issue a warrant for the arrest of the person who failed to appear as required by the court order. (Civ. Proc. Code § 708.170(a)(1).)

- 10) Provides that if the person's failure to appear is without good cause, the judgment creditor shall be awarded reasonable attorney's fees incurred in the examination proceeding. Attorney's fees awarded against the judgment debtor shall be added to and become part of the principal amount of the judgment. A person who willfully makes an improper service of an order for an examination which subsequently results in an arrest of the person who fails to appear is guilty of a misdemeanor. (Civ. Proc. Code § 708.170.)
- 11) Permits a court to issue an order of contempt for disobedience of any lawful judgment, order, or process of the court. (Civ. Proc. Code § 1209(a)(5).)
- 12) Permits a court to issue an arrest warrant for any person who failed to appear pursuant to a court order. (Civ. Proc. Code § 1993(a)(1).)
- 13) Prohibits a person from being imprisoned in a civil action for debt or tort, whether before or after judgment. This does not affect any power a court may have to imprison a person who violates a court order. (Civ. Proc. Code § 501.)
- 14) Defines debt for purposes of the Fair Debt Collection Practices Act as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. (15 U.S.C.S. § 1692a(5).)

This bill:

- 1) Extends the timeline for service of the order to appear for examination to 30 days before the date set for the examination.
- 2) Authorizes a judgment debtor, instead of appearing at the examination, to file a judgment debtor's financial affidavit in a form prescribed by the court and signed under penalty of perjury and serve copies of all filed documents on the judgment creditor no later than 10 days prior to the date set for the examination. Such documents will be filed under seal.
- 3) Provides that where the order is for a judgment debtor to appear in a case concerning *consumer debt*, no warrant for arrest or to appear may be issued for a debtor's failure to appear for an examination or failure to file and serve the debtor's financial affidavit. In such cases, the court shall issue an order to show cause to determine whether to issue a warrant to compel the attendance of the judgment debtor. Any such warrant shall be satisfied by the debtor's appearance or the filing of a financial affidavit.

- 4) Defines “consumer debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Consumer debt does not include rental debt or debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee.
- 5) Provides that if the judgment debtor states in a financial affidavit signed under penalty of perjury and served on the judgment creditor and filed with the court at least 15 days prior to the examination, that all their income and assets are exempt, the court shall acknowledge receipt of the affidavit and cancel the examination, unless the judgment creditor opposes the judgment debtor’s financial affidavit. If not timely served and filed, the court shall disregard the affidavit and proceed with the examination.
- 6) Establishes the process for a creditor to challenge the financial affidavit and show cause why an examination is necessary. The financial affidavit and notice of opposition to the financial affidavit shall constitute the pleadings. The court in its discretion may rule upon these pleadings or order the production of evidence.
- 7) Requires a judgment debtor, and their spouse, as specified, to include the following information in the financial affidavit:
  - a) Person and relation of any dependent.
  - b) Gross monthly income, including withholdings and take-home pay.
  - c) Total monthly income.
  - d) Money received from other sources.
  - e) Property owned, including cash, bank accounts, real estate equity and other personal property.
  - f) Itemized monthly expenses.
  - g) Any outstanding debts, including balance owed and to whom.
  - h) Any other facts which support the claim of exemption.
- 8) Updates the notice to be provided by the court to the debtor accordingly.

### COMMENTS

#### 1. Money judgments in California

Pursuant to the Enforcement of Judgments Law, Code of Civil Procedure section 680.010 et seq., a “money judgment” is that part of a judgment which requires the payment of money. A “judgment creditor” is the person in whose favor a judgment is rendered, and a “judgment debtor” is the person against whom a judgment is rendered.

When a money judgment is entered in a court of this state, the judgment creditor is given a specified amount of time to enforce such judgment. However, this period of enforceability may be extended by filing an application for renewal of the judgment with the court in which the judgment was entered.

The law provides a number of different mechanisms that judgment creditors can use to try to collect the money they are owed from the judgment debtors. For example, a judgment creditor can have a lien imposed on any property that the judgment debtor owns. (Code Civ. Proc. § 697.010 et seq.) A judgment creditor can arrange to have the money taken out of the judgment debtor's financial accounts through a bank levy. (Code Civ. Proc. § 700.140 et seq.) A judgment creditor can also arrange to have some of the judgment debtor's wages garnished for purposes of satisfying the debt owed. (Code Civ. Proc. § 706.010 et seq.)

To establish what property, accounts, assets, and sources of the income the judgment debtor has, the law provides for debtor's examinations. The judgment creditor can apply to the court for an order requiring the judgment debtor to appear before the court at a specified time and place in order to furnish information to aid in the judgment creditor's enforcement of the money judgment.

The judgment creditor must personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Such service creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court. The order must include a clear notice to the debtor: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

Currently, if a judgment debtor fails to appear, the court is authorized to have the person brought before the court to answer for the failure to appear pursuant to a warrant, and may punish the person for contempt. The law also authorizes the court to issue a warrant for the arrest of the person who failed to appear as required by the court order.

## 2. Humanizing the debtor's examination for consumers

The role of the debtor's examination is obviously important to the debt collection process; it allows for a proper accounting of the assets and income that can be used to satisfy the lawfully imposed money judgment. However, those most likely to be subject to arrest for failure to appear at these examinations are lower income consumers that are not sophisticated actors when it comes to court processes. This bill seeks to address this arguably inhumane element of the collection process.

The author explains the need for the bill:

AB 1119 greatly impacts underserved and marginalized communities, as those are the communities most likely to be impacted by the proposed changes. Low-income, or indigent, defendants are often sued in limited civil court to collect medical and consumer debts. Many defendants do not understand the process of the judicial system, and are either too scared, or do not understand how, to respond to lawsuits. This results in a disproportionate number of default judgments occurring in collection lawsuits, particularly against low-income/indigent defendants.

The bill would provide a way for those low-income/indigent defendants to share with the court that they are exempt from collection under California law. In addition, the bill would also help low-income/indigent defendants avoid issues that might occur from the simple existence of the warrant.

The scope of the issue was reported on by the American Civil Liberties Union:

An estimated 77 million Americans – one in three adults – have a debt that has been turned over to a private collection agency. Thousands of these debtors are arrested and jailed each year because they owe money. Millions more are threatened with jail. The debts owed can be as small as a few dollars and can involve every kind of consumer debt, from car payments to utility bills to student loans to medical fees. These trends devastate communities across the country as unmanageable debt and household financial crisis become ubiquitous, and they impact Black and Latino communities most harshly due to longstanding racial and ethnic gaps in poverty and wealth.

Debtors' prisons were abolished by Congress in 1833 and are thought to be a relic of the Dickensian past. In reality, private debt collectors – empowered by the courts and prosecutors' offices – are using the criminal justice system to punish debtors and terrorize them into paying even when a debt is in dispute or when a debtor has no ability to pay.

The criminalization of private debt happens when judges, at the request of collection agencies, issue arrest warrants for people who failed to appear in court to deal with unpaid civil debt judgments. In many cases, the debtors were unaware they were sued or had not received notice to show up in court.

Tens of thousands of these warrants are issued annually, but the total number is unknown because states and local courts do not typically track these orders as a category of arrest warrants.<sup>1</sup>

This bill seeks to provide a more efficient and humane approach to debtor's examinations when the judgment to be enforced arises from consumer debt. "Consumer debt" is defined as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Consumer debt explicitly does not include rental debts or debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee. The process remains the same for all other debts.

For this population of debtors, the court is no longer authorized to issue a warrant for their arrest or to hold them in contempt for simply failing to appear. However, the debtor remains potentially liable for the judgment creditor's attorney's fees for failing to appear.

In lieu of appearing at the examination, the consumer is permitted to file a judgment debtor's financial affidavit that must be signed under penalty of perjury. The debtor must serve copies of all filed documents on the judgment creditor no later than 10 days prior to the date set for the examination. The bill requires a judgment debtor, and their spouse, as specified, to include detailed information in the financial affidavit, including:

- Person and relation of any dependent.
- Gross monthly income, including withholdings and take-home pay.
- Total monthly income.
- Money received from other sources.
- Property owned, including cash, bank accounts, real estate equity and other personal property.
- Itemized monthly expenses.
- Any outstanding debts, including balance owed and to whom.
- Any other facts which support the claim of exemption.

If the debtor states in the financial affidavit that all their income and assets are exempt, the court is to cancel the examination, unless the judgment creditor opposes the judgment debtor's financial affidavit. The bill provides a clear process for filing a notice of opposition and for a hearing on the matter and the production of evidence at the discretion of the court. If copies of the financial affidavit are not timely served and filed, the court shall disregard the affidavit and shall not cancel the examination.

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<sup>1</sup> *A Pound of Flesh: The Criminalization of Private Debt* (2018) ACLU, <https://www.aclu.org/report/pound-flesh-criminalization-private-debt> [as of June 24, 2023].

3. Stakeholder positions

The co-sponsors of the bill, the California Low-Income Consumer Coalition and the National Consumer Law Center, write:

In California, once a plaintiff creditor or debt collector has obtained a judgment against a consumer, the debt collector may seek to “examine” the consumer to determine their assets. If the defendant fails to appear for the debtor’s examination, which involves going to court, the judge in the case may order a bench or an arrest warrant to be issued for the defendant. Whether or not the warrant actually results in jail time for the defendant, it may exacerbate a future minor infraction – such as being pulled over for a broken taillight – for a low-income worker who might then be subject to arrest.

Almost 2 out of 3 debt cases in California are default judgments in favor of debt collectors where consumers were not able to defend themselves in court. This is often because they were never served with proper notice, have work or child care commitments they can’t miss, are unaware they have to take action, or are afraid to interact with the judicial system. The difficulty most people have in navigating the court system significantly contributes to failures to appear, and even judgment-proof individuals or people who don’t actually owe the debt may feel compelled to pay because of a fear of arrest.

AB 1119 will rebalance the power dynamic between debt collectors and families with consumer debt by:

1. Reducing the need for court appearances: People who get a notice to appear in court, but whose income and property value are under the threshold protected by existing California law, would be able to file a financial affidavit rather than taking up court time. The court may still order the debtor to be examined if the plaintiff can present sufficient evidence of higher income. .
2. Making Clear there is no jail time for smaller debts: In limited civil cases, where debts are \$25,000 or less, when debtors fail to appear in court as scheduled, the court could still issue an order to show cause to determine whether to issue a warrant; but under this bill even if a warrant is issued, no one in a limited civil case would be jailed for failure to pay or failure to comply with an order to pay.

There is a growing recognition in California and throughout the nation that no consumer should face jail over a debt being owed, period.



In opposition, the California Association of Judgment Professionals writes:

We respectfully want to lodge our opposition to §708.170(b), because the measure provides no way the courts can effectively and efficiently comply with the logistics of how the statute can possibly be [implemented].

Existing law provides an option for low-income consumer debtors: A money judgment is a court order. If any judgment debtor of a judgment based upon “consumer debt”, whether low-income or otherwise, truly cannot pay off the judgment and does not want to file bankruptcy to discharge the debt completely and does not want to be ordered to appear at a judgment debtor examination, that debtor has the current ability to obtain a court order to pay the judgment in payments or installments.<sup>1</sup> Doing so would stave off the judgment creditor’s enforcement of the judgment, which is much easier and simpler for all concerned.

#### **SUPPORT**

California Low-Income Consumer Coalition (co-sponsor)

National Consumer Law Center (co-sponsor)

Bet Tzedek Legal Services

Centro Legal De LA Raza

Community Legal Services in East Palo Alto

Elder Law & Advocacy

Katharine & George Alexander Community Law Center

Legal Aid of Marin

Legal Aid Society of San Bernardino

Legal Assistance for Seniors

Open Door Legal

Public Counsel

Public Law Center

Riverside Legal Aid

Watsonville Law Center

#### **OPPOSITION**

California Association of Judgment Professionals

**RELATED LEGISLATION**

Pending Legislation:

AB 1139 (Garcia, 2023) applies the Tribal Court Civil Money Judgment to specified judgments relating to tribal taxes, and related interest and penalties. AB 1139 is currently on the Senate Floor.

AB 1414 (Kalra, 2023) prohibits the use of common counts in actions for collection of consumer debt. The bill excludes consumer debt from the definition of “book account.” AB 1414 is currently on the Senate Floor.

Prior Legislation:

SB 1200 (Skinner, Ch. 883, Stats. 2022) placed restrictions on the renewal of certain money judgments and reduces the interest rate applied to certain outstanding money judgments and extends the period of time within which a judgment debtor can move to vacate or modify a renewal.

AB 1580 (Committee on Judiciary, Ch. 30, Stats. 2021) set forth procedures for identifying a natural person who must appear – and can be held accountable for failing to appear – at a debtor’s examination on behalf of an organization, when that organization fails to specify someone else who will appear on its behalf.

**PRIOR VOTES:**

Assembly Floor (Ayes 53, Noes 18)  
Assembly Floor (Ayes 57, Noes 18)  
Assembly Appropriations Committee (Ayes 12, Noes 4)  
Assembly Judiciary Committee (Ayes 7, Noes 2)

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