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Part I. Commercial Bankruptcy*By Jenna J. Riedel**

Stalled Recovery: Discounting the Impact of Motor Vehicle Exemptions in Bankruptcy

A debtor's ability to rehabilitate into society after financial distress is considered primarily under federal discharge and exemption policy rather than state policymaking.¹ However, individuals' contributions to society, or lack thereof, are more likely to be impacted at a local level. These issues merge important policy questions about whether a state's ability to create exemption laws is of more important than the discharge itself, which is granted by federal law.² For exemption policy to be pertinent, *both* state and national policy must be considered.³ Exemption laws have long been applied “liberally” and “in favor of the debtor.”⁴ Still, the application of those exemption laws must remain fair and avoid windfalls to either debtor or creditor.⁵ This tension regarding potential windfalls for either party in bankruptcy has endured as a contentious topic since bankruptcy law was first established in the United States.⁶ The eventual compromise was allowing even the most “honest but unfortunate debtor” to be excluded from discharging certain debts in bankruptcy under appropriate circumstances as designated by Congress.⁷

The question of what property a debtor is allowed to retain, or “exempt” in bankruptcy is generally applicable in *every* individual's bankruptcy case, as well as state issues of judgment, collection, and/or levy. On its face, bankruptcy operates as a federal proceeding,⁸ property within a debtor's bankruptcy estate remains subject to each state's property law.⁹ Arguments could be made that more consistent federal regulation in bankruptcy exemptions would indeed increase efficiency, predictability, and fairness for all parties involved.¹⁰ However, Congress's lack of interest in state exemption laws could also be interpreted as an overall unwillingness to address the complexities of personal property and/or exemption laws.¹¹ While the predominant argument remains that individual states know their residents' cost of living best (and therefore can apply the appropriate exemptions),¹² the unfortunate truth is that state politicians have little incentive to address outdated exemption laws to maintain the modern needs of their own constituents who seek protection under the Bankruptcy Code.¹³ Some states' lack of motor vehicle exemption epitomizes this failure.

Another rarely touted “by-product” of outdated exemptions is the often-overlooked fact that debtors' attorneys are forced to make difficult decisions advising clients on how to protect the most property through permissible forms of pre-bankruptcy planning. This point cannot be emphasized enough: debtors should not be incentivized to trade in (i.e., deplete) existing vehicle equity to avoid losing their vehicle or otherwise filing an unsustainable Chapter 13 plan. Not having a motor vehicle exemption can encourage this type of transaction. Ultimately, debtors' attorneys bear the inevitable ethical burden, and debtors walk the fine line which risks their bankruptcy discharge—and potentially their entire case.

This article will discuss some of the consequences that linger as a result of outdated and inconsistent bankruptcy exemption laws among the states. Specifically, this article sheds light on the understated impact of motor vehicles and auto loans in modern bankruptcy filings. First, this article will provide a brief historical overview highlighting some of the logic behind exemption

policy, and what exemptions aim to protect. This article will examine the transition from previously uniform exemption structure to the current state-by-state approach, along with changes implemented by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The article will then discuss the impact(s) of personal property on a debtor's ultimate decision to file for bankruptcy. More specifically, this article examines how certain states' failure to provide basic exemptions for practical personal property, such as motor vehicles, create increased financial and ethical dilemmas for debtors, attorneys, and creditors alike as a result. Finally, this article will consider whether the federal exemptions under U.S.C.A. 11 § 522 should serve as the floor for state exemption laws as a reasonable approach to keep the existing state-by-state scheme.

EXEMPTION BACKGROUND

The exemption system allows debtors to protect certain necessities of life from creditors seizure. Exemptions serve to assist three beneficiaries: the debtor, the debtor's family/dependents, and the debtor's community.¹⁴ Exemptions functioning as a form of protective property allowance dates as far back as the Code of Hammurabi, Islamite law, and Roman law.¹⁵ While definitions of “necessities of life” have drastically transformed since Babylonian times, policy concerns remain the same.¹⁶ However, exemption laws must be adapted and adjusted to remain relevant in our society.¹⁷ Instead of meeting this necessity, Congress has avoided establishing uniform laws upon the subject of bankruptcies¹⁸ since the Bankruptcy Act of 1898 (the “1898 Act”)¹⁹ when an initial system of uniform federal exemption laws was abandoned.²⁰ Following the 1898 Act, the Supreme Court justified the new state-by-state exemption system as “sufficiently uniform” under a doctrine of “geographical and not personal uniformity” among the states.²¹ While the term “uniform” itself is not defined within the Bankruptcy Code, the Supreme Court's *Moyses* holding established that Congress could indeed *evenhandedly* (i.e., uniformly) *abdicate* its power to the states to determine their own bankruptcy exemption laws, as have done.²²

The Bankruptcy Act of 1978²³ restored²⁴ the uniform federal bankruptcy exemption laws but also rather paradoxically permitted each of the states to “opt-out” of the same federal exemption package.²⁵ The 1978 opt-out provision has been viewed as a form of Congressional compromise to reconcile the blunders that resulted from elimination of the federal exemptions in the 1898 Act.²⁶ *Moyses* created a difficult precedent for federal exemption laws to be reinstated and imposed upon individual states.²⁷ Unsurprisingly, the states were reluctant to relinquish control over exemptions in bankruptcy proceedings, which they had effectively controlled for eighty years—all during the societal metamorphosis wrought by changes to transportation and financial turmoil.²⁸ The 1978 “opt-out” provision was a concession *permitting* the federal exemptions as an “option” rather than a requirement.²⁹ This approach³⁰ essentially denied many debtors of the federal exemption package under § 522(d).³¹

The most recent change to consumer bankruptcy laws, the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) neglected to modify the Bankruptcy Code's exemption scheme.³² This is unsurprising, as BAPCPA aimed to prevent and stigmatize debtor abuse, increase creditor recovery, and reduce judicial discretion.³³ BAPCPA effectively established additional barriers³⁴ for middle-class consumer debtors in the form of means testing and the credit counseling requirements.³⁵ A lower standard of abuse was imposed, which permitted dismissal for mere abuse, than the previous threshold requiring “*substantial* abuse.”³⁶ These policy goals are inconsistent with the liberalization of the exemption framework.

A debtor's ability to rehabilitate after financial distress should be of primary concern in exemption lawmaking because it can impact both the local and national economy.³⁷ This sparks important questions about whether the exemptions (as determined by state law) are perhaps more impactful than the discharge itself, which can only be granted by federal law.³⁸ This also leads to discussions on whether state legislatures should be relied upon so heavily to shape bankruptcy exemption laws at their own discretion and expediency.³⁹ Nearly every federal circuit court has indicated that state exemption laws should be applied liberally and in favor of the debtor.⁴⁰ Although the limitations on discharge should be similarly construed,⁴¹ BAPCPA's have made it more likely that an “honest but unfortunate debtor” may be disqualified from discharging certain debts in bankruptcy.⁴² In contradistinction to some states who constitutionally protect exemptions,⁴³ there is no federal constitutional right to a discharge of a person's indebtedness.⁴⁴ A discharge must be *earned* through appropriate disclosures before it is ultimately granted by the federal bankruptcy court.⁴⁵

The bankruptcy system has persistently emphasized prompt and effectual administration of the estate.⁴⁶ Yet, consistency and transparency may be more effectively obtained with federal exemptions serving as a minimum requirement, rather than a discretionary suggestion to the states. Some arguments have suggested that the federal exemptions under § 522, should serve as a baseline for state exemption laws—permitting states to establish their ceiling based on the federal baseline standard.⁴⁷ This suggests that inadequate exemption laws of states could be identified simply by comparing state exemption laws with the federal exemption allowances provided in § 522.⁴⁸ A layperson comparing federal exemption laws with state exemption laws could immediately notice that *most* states, along with the federal exemptions, provide for an allowance for an individual to protect at least some equity in a motor vehicle.⁴⁹

Additionally, the federal exemptions under § 522 have provided a motor vehicle exemption since 1978, while other states have opted to provide motor vehicle exemptions even earlier.⁵⁰ Nevertheless, six out of fifty states still *do not* provide a specific motor vehicle exemption for residents at the time of this writing: Alabama, Indiana, Maryland, Mississippi, South Dakota, and Tennessee (non-motor vehicle exempt “NMVE” states).⁵¹

MOTOR VEHICLES ARE NECESSARY IN MODERN SOCIETY

Bankruptcy and exemptions provide a tangible benefit to society and individuals alike. Society benefits when a debtor is no longer dependent on welfare programs, and the debtor can readily contribute their wages to local and national commerce. The debtor individually benefits obviously by being freed from otherwise debilitating debt.⁵² Decreased dependency on welfare and individual freedom from oppressive debt each provide relevant purposes to society. When a person faces impossible debt repayment, there is little incentive to earn wages which would otherwise only be subjected to ultimate seizure by creditors.⁵³

More Americans own vehicles than homes.⁵⁴ This means that vehicles, as a contributory factor of financial stability to the “American Dream,” could be more impactful than home ownership itself.⁵⁵ Access to transportation, often in the form of a personal motor vehicle, is necessary for most individuals to function in American society.⁵⁶ This is *not* a recent change or policy determination, but rather an issue of access to opportunity.⁵⁷ Financial stability, probability of upward mobility, and general societal affluence, have been long associated with transportation⁵⁸ in society.⁵⁹ An individual's access specifically to public transportation in urban areas increases the ability to obtain an education, maintain employment, and has the ability to increase overall prosperity within an entire community.⁶⁰ Public and private transportation provide access to basic life necessities⁶¹ such as healthcare, childcare, food, and more rural areas.⁶² Reflecting this importance, transportation has been routinely regulated by both local and federal governments. Studies have found that *not* owning a vehicle and/or otherwise relying on public transportation is more likely to be linked to inadvertent economic hardship rather than a conscious decision(s) to be “car-free.”⁶³

A lack of access to public transportation in many rural communities creates additionally distinct challenges.⁶⁴ Residents in rural communities are forced to take threats of repossession more seriously as a threat to their family's livelihood; there is no substitute means of transportation upon the seizure of their vehicle. The loss of a vehicle, *particularly in rural communities*, can eliminate all forms of income-generating opportunities and further impoverish individuals.⁶⁵ A person who owns a vehicle is more likely to be employed, more likely to obtain or have access to means of higher-paying employment, and/or ability to work overtime to pay potentially unanticipated bills.⁶⁶ Rural states' residents are inherently more vulnerable to predatory terms of lending, and less likely to possess buyer leverage in lending based on limited access to credit.⁶⁷ Consumers who are financially strapped in rural communities often have minimal bargaining power and limited credit options, and are therefore more likely to be indebted to local lenders, associated employers, or other closely related bankers in their small community.⁶⁸

SUBPRIME LENDING, AND BUILT-IN CREDITOR PROTECTIONS

Unsurprisingly, subprime auto lending is ripe for abuse in both rural and urban communities but is especially problematic where individuals have less access to financing and financial education.⁶⁹ Longer-term automobile loans can be particularly alluring for individuals in financial distress by creating a false sense of affordability.⁷⁰ The length of financing terms has

continued to increase for motor vehicles.⁷¹ However, prolonged borrowing of a depreciating asset like a vehicle puts borrowers at extended financial risk for maintenance and/or repairs (while still making monthly payments), and *increases* the overall cost of the loan for the borrower. Vehicles are often secured by liens and are subject to quicker repossession through evolving methods such as automatic shut-off triggers and tracking devices.⁷² The time frame from default to repossession for vehicles is considerably quicker than a foreclosure process on real property and subsequently has the ability to cause severe distress to financially individuals.⁷³ Moreover, following repossession, creditors may sue a debtor for deficiencies owed after the sale of the vehicle.⁷⁴ Deficiency suits can follow a debtor for several years after a vehicle has been repossessed, possibly even longer than the vehicle was in the debtor's possession.⁷⁵ This process incentivizes “buy here, pay here” car dealerships to engage in a “rinse and repeat process” which ultimately generates more profit on *nonpayment* than actual *timely* payment by debtors.⁷⁶

The Bankruptcy Code expressly provides built-in protections for automobile lenders. Vehicles classified as purchase money security agreements are protected under a 910-day cramdown prohibition.⁷⁷ Before the 2005 enactment of BAPCPA, debtors could file bankruptcy and reduce the creditor's claim (loan balance) on a vehicle to the value of the collateral (the vehicle) immediately, regardless of when the vehicle was purchased.⁷⁸ The BAPCPA 910-day rule protects creditors as-is because a debtor who purchases a vehicle 910 days or less prior to filing for bankruptcy will not be permitted to utilize the cramdown provisions of § 1325.⁷⁹ Because vehicles are often rapidly depreciating assets, decreasing in value immediately upon leaving the dealership, this provision remains reasonable from a public policy standpoint.

VEHICLE COSTS AND EQUITY DISINCENTIVES

Still, rising vehicle costs have made many states' outdated exemptions archaic, even in the states that provide motor vehicle exemptions.⁸⁰ Mass produced automobiles were widely popular because of their initial affordability with the invention of the Ford assembly line.⁸¹ Today, prices of vehicle ownership continue to skyrocket⁸² as the industry endeavors to adjust following supply chain issues exacerbated by the COVID-19 pandemic.⁸³ Faced with overall higher costs associated with vehicle ownership,⁸⁴ more individuals are keeping their existing vehicles longer.⁸⁵

However, Debtors who own their vehicles outright (or who have paid down the loan significantly) receive little incentive in the NMVE states to retain their already depreciated asset without a relevant motor vehicle exemption. In NMVE states, it is confusingly advantageous for a debtor to have a loan on a vehicle because the non-exempt value is determined by the debtor's interest in the subject property (*i.e.*, the car).⁸⁶ To put it bluntly, a debtor in a NMVE state is better situated if they have a heavily encumbered vehicle, than if they own a modest vehicle outright. This type of policy is counterintuitive to conservative spending as bankruptcy policy encourages. The result is when a debtor is engaging in *lawful* prebankruptcy planning,⁸⁷ the loan-to-value ratio becomes especially important in large-value assets such as motor vehicles. “Wildcard” exemptions, provide some limited “catch-all” protections for debtors' miscellaneous property but vary drastically among the states as will be discussed more in depth below.

For example, a debtor in a NMVE state such as South Dakota who owns a 2013 Ford Focus free and clear will utilize \$4,363.00 of their \$5,000.00 personal property “wildcard” exemption to retain that particular vehicle in their bankruptcy filing.⁸⁸ A miniscule allowance of \$637.00 is therefore relied upon to protect a handful of other potential personal property such as bank accounts, tax refunds/credits, earned unpaid wages, electronics, furniture, machinery/tools, hobby equipment, etc. In the same state (South Dakota), another debtor filing bankruptcy with a 2022 BMW X3⁸⁹ valued at \$18,800.00, subject to a \$23,000.00 secured loan, will preserve the entirety of their \$5,000.00 personal property exemption for the same handful of personal property as the debtor prior. The outcome is imprudent and forces debtors to make contradictory decisions of whether to take on more long-term debt (in the form of a car loan) or otherwise pay into the bankruptcy estate for nonexempt personal property/equity in the case of a potential bankruptcy filing.

Consequently, it is not uncommon for debtors' attorneys, particularly in NMVE states, to suggest, *in good faith*, that debtors with vehicle equity or a dilapidated vehicle with inflated value, purchase a *reasonable* new vehicle on the eve of bankruptcy. This type of pre-planning with the help of attorneys can avoid depletion of the debtor's available “wildcard” or general personal property exemptions such as the first example above. Because new vehicles lose nearly 10% of their value within the first month of ownership, any existing equity a debtor had in a vehicle prior to trade-in has likely vanished and is now irretrievable

to creditors.⁹⁰ While this type of prebankruptcy planning can benefit debtors, it also furthers the detrimental subprime lending industry,⁹¹ and simultaneously reduces creditor recovery. At the same time, these contradictory prebankruptcy suggestions are key strategies for debtors' attorneys to protect clients' property, further shaping the already complex "contours of the fresh start policy."⁹²

It is counterintuitive to encourage debtors to increase debt loads when their existing finances are in an unsustainable state, but debtors' attorneys must reconcile a client's practical needs for a functional vehicle, with the ethical dilemma of feasibility and/or bad faith.⁹³ This type of prebankruptcy planning is not fraudulent⁹⁴ but rather underscores a genuine argument—**inadequate exemption laws create an incentive for debtors to convert assets prior to filing for bankruptcy**. Conversion of assets creates complex dilemmas for attorneys and put a debtor's discharge and/or dismissal of their case at risk.⁹⁵ While the size of the bankruptcy estate and types of assets converted matter in a determination of bad faith pre-bankruptcy planning, the common analogy courts have deemed applicable is "there is a principle of too much; phrased colloquially, when a pig becomes a hog, it is slaughtered."⁹⁶ Perhaps a more reasonable standard in determining excessive prebankruptcy planning for debtors with vehicles is perhaps whether "the debtor here does not want a mere fresh start, he wants a head start."⁹⁷ This standard is generally workable, however, vehicle ownership is better classified as a *starting line*, rather than a head start by modern societal requirements.

WILDCARD AND OTHER EXEMPTIONS

A "wildcard" exemption permits debtors who have maxed out other categorical exemptions to protect *additional* property from admission into the bankruptcy estate as a type of "spillover exemption."⁹⁸ All NMVE states provide some type of a "catch-all" or "wildcard" exemption for personal property, but most vary *significantly* by state.⁹⁹ Some states opt to offer an increased wildcard exemption to compensate debtors who do not have any equity in a homestead and therefore have no homestead exemption to take advantage of which is often the largest property exemption utilized by debtors.¹⁰⁰ The logic behind this *could* partially be explained through the likelihood that debtors who do *not* have a mortgage are *less* likely to have access to credit/financing major purchases (such as a vehicle), and therefore debtors without a homestead are more likely to have paid cash outright for many of their higher valued assets.¹⁰¹

Wildcard exemptions allow debtors in NMVE states to claim their interest (often only a portion) in equity in a motor vehicle as exempt under § 522.¹⁰² A debtor in a NMVE state with a low wildcard exemption who has equity in a vehicle will be forced to use the same wildcard allowance as a debtor with a secured loan (no equity; see BMW example above¹⁰³) to protect other necessary property their household relies on such as bank accounts, tax refunds, and more. In other words, a scarce wildcard exemption in a NMVE state will often leave very little, if any, remaining exemption for a debtor to protect equity in a motor vehicle in tandem with other basic contemporaneous assets such as household goods or money in a bank account for basics such as groceries or rent. Therefore, the result is that a debtor may be forced to choose between surrendering their car or repaying the bankruptcy estate for the value of nonexempt property above the apportioned exemption allowance.

Non-exempt property (often in the form of equity in a vehicle in NMVE states) and budgetary allowances become especially important in calculating Chapter 13 plans.¹⁰⁴ Debtors are expected to live on a strict budget while maintaining a reasonable lifestyle as determined by the Means Test.¹⁰⁵ However it is worth noting that the Means Test itself provides an allowance to chapter 13 debtors for vehicle payments. If a debtor owns their vehicle outright, and the presumption of abuse exists, a debtor is essentially penalized for owning a vehicle outright, ultimately paying that "disposable income" into the bankruptcy plan rather than making a car payment.¹⁰⁶ Regardless, a simple miscalculation of affordability on monthly payments in a chapter 13 plan can make the difference between a debtor receiving a discharge or dismissal of their case entirely.¹⁰⁷ A debtor's failure to maintain budget and/or surrendering a vehicle in a 3-5-year bankruptcy plan can lead to further dependence on public assistance, as well as reliance on alternative forms of risky lending such as credit cards or payday loans.¹⁰⁸ States should be cognizant of exemption policy that inadvertently stimulates debt recidivism and otherwise undermines the ability of debtors to obtain a fresh start.

Of the NMVE states, South Dakota provides the lowest wildcard exemption at \$5,000.00, and Mississippi offers the highest at \$50,000.00 for residents over 70 years of age.¹⁰⁹ Notwithstanding this age restriction, NMVE states average around \$8,000.00

for wildcard allowances. However, several states, such as Indiana, Alabama, and Maryland provide statutory provisions adjusting exemptions based on inflation and the Consumer Price Index.¹¹⁰ The United States Code provides a mechanism directing automatic adjustments of the federal bankruptcy exemptions under § 522 every three years.¹¹¹ These required statutory adjustments update states' exemption allowances to remain current with modern standards of living. Without such statutory requirements, states' exemption laws are less likely to be updated regularly, leading to an increased risk of stagnant exemption laws such as NMVE states Mississippi, South Dakota, and Tennessee. Mississippi's wildcard was last adjusted in 2008,¹¹² South Dakota's was updated in 2013, and Tennessee's wildcard exemption has remained at \$10,000.00 since 2010.¹¹³

Many states provide protections for business or employment-related property through “tools of the trade” exemptions, but it is worth noting that exemptions are not permitted for businesses filing under the Bankruptcy Code.¹¹⁴ However, unlike the other NMVE states, South Dakota, Indiana, and Mississippi do not offer tools-of-the-trade specific exemption, *in addition* to lacking a motor vehicle-specific exemption.¹¹⁵ Alabama provides the most generous “tools of the trade provision” which permits a debtor to entirely exempt a business vehicle, along with *any* other property “*essential to the debtor's business.*”¹¹⁶ Maryland similarly provides a \$5,000.00 allowance protecting property “*necessary for the practice of any trade or profession[.]*”¹¹⁷ These classifications of specific types of business related exemptions prove problematic, however. Trade exemptions, and “essential” or necessary qualifying exemptions have been a primary cause of exemption disputes.¹¹⁸ These classifications of property remain subjective, habitually toying a blurry line between personal property and business property, especially for debtors in Chapter 7 cases. Therefore, the most effective strategy to avoid arbitrary classifications or disputes regarding “essential” or “business” property, is for each state to provide a basic reasonable exemption allowance—including a motor vehicle.

EFFICACY OF GARNISHMENT

Wage garnishment is a common method of garnishment which continues to be used by creditors¹¹⁹ but, like exemptions, has a lengthy historical background dating as far back as the Middle Ages.¹²⁰ The logistics of garnishment are simple, debtors are served with notice, the debtor's employer withholds a percentage to satisfy a debt owed to the creditor, the employer pays the creditor. Satisfaction of debt is essential. It provides more opportunities for access to credit.¹²¹ Still, Congress *intentionally* limited garnishment as a means for debtors to specifically avoid bankruptcy, and states followed suit shortly thereafter, enacting laws that often protected debtors in excess of the federal law.¹²² When the Consumer Credit Protection Act was enacted in 1968, most states revised their wage garnishment statutes to “mirror” the language of federal law.¹²³ Garnishment remains an effective method for collection in modern society, but in order to collect—a debtor must be employed. Employment often hinges on access to a motor vehicle.

As denoted by Justice Sotomayor in 2021 in *City of Chicago v. Fulton*,¹²⁴ debtors need a car to get to work, and debtors who are gainfully employed are more likely to be able to pay on debts. Seizure and/or forced liquidation of a debtor's vehicle¹²⁵ denies a debtor the ability to earn consistent income and employment—especially in rural communities. An unemployed debtor will rarely have funds to contribute towards repayment of other preexisting creditors and likely will be unable to pay any deficiencies owed to the vehicle lender.¹²⁶ In the bankruptcy context, a debtor without regular income also cannot complete long-term payments required by the often more “socially virtuous” repayment of a Chapter 13¹²⁷ (*wage earners*¹²⁸) bankruptcy plan. Thus, a creditor's prospects for long term repayment under either garnishment or a chapter 13 plan are improved by a debtor owning a motor vehicle.

All fifty states and the federal government permit some form of garnishment to settle debts.¹²⁹ Like middle-class bankruptcy debtors, garnishees¹³⁰ are not the most sympathetically regarded group of individuals.¹³¹ In theory, a person experiencing a wage garnishment should be earning sufficient wages to produce disposable income after deductions, but that same garnishee has nevertheless avoided paying on their debts without forced intervention.¹³² Like a bankruptcy means test calculation, a wage garnishment “reasonably” estimates a debtor's disposable income.¹³³ The Consumer Credit Protection Act of 1968 (CCPA) sets federal restrictions for garnishment amounts, but again, states are permitted to establish more specific protections under their own state laws.¹³⁴

If wage garnishment functions as a precursor to bankruptcy, data should show a large percentage of wage garnishments reported on debtors' bankruptcy schedules.¹³⁵ However, there is little evidence of a strong correlation between wage garnishments and ultimate bankruptcy filings ensuing.¹³⁶ In fact, wage garnishments are designed, at least in part, to ensure a debtor has ample means to avoid filing for bankruptcy.¹³⁷ Unlike systematically low exemption laws, garnishment has been shown to have a positive impact in relation to bankruptcy, resulting ultimately in debtors increasing income in the form of wages.¹³⁸ Allowing debtors to retain motor vehicles via exemptions facilitates more collection via garnishments because debtors will be more likely to be employed, plus they will not have an incentive to take on a car payment to increase their deductions from their garnishment schedules.

CONCLUSION

In conclusion, outdated and inconsistent exemption laws within the states, specifically as they relate to motor vehicles and common personal property, create significant financial and ethical challenges for debtors, creditors, and attorneys. Attorneys face the difficult task of advising clients to engage in questionable prebankruptcy planning that often conflicts with the spirit of bankruptcy policy itself. This discrepancy highlights the need for legislative reform among the states to provide a more clear, modern, and consistent approach to personal property exemptions.

Bankruptcy policy should balance the interests of all parties involved and ultimately focus on the rehabilitation of debtors into society. Modernization of exemption laws can protect debtors, reduce the complexities for seasoned attorneys associated with representing debtors, and better represent our modern society. The evolving definitions of personal property require adequate consideration in state law. Congress has abdicated this unique power to the states. While bankruptcy law often remains slow to change, the states have the power and ability to ensure that their residents have a fair opportunity for a fresh start through their individual bankruptcy exemption laws. From the creditor perspective, motor vehicle exemptions may also improve garnishment outcomes by facilitating debtors' transportation to work.

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Footnotes

- * Jenna J. Riedel received her J.D. from the University of South Dakota Knudson School of Law in May 2024. Special thanks to Professor Robert W. Miller and Clair Gerry for all their insightful comments and suggestions on this topic over the last few years.
- 1 Mendales, [Rethinking Exemptions in Bankruptcy](#), 40 B.C. L. Rev. 851, 854 (1999).
- 2 Property of a debtor is either exempt, or available to distribute to creditors and nonexempt—a policy that has been considered in almost all forms of bankruptcy law internationally. Yet, several forms of bankruptcy exist without the grant of a discharge. Koffler, [The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity](#), 58 N.Y.U.L. REV. 22, 66 (1983).
- 3 Koffler, 58 N.Y.U.L. REV. at 32. State law alone cannot shape bankruptcy exemption policy because the primary state considerations are 1) impairment of contractual rights; 2) satisfaction of unpaid debts; and 3) individual liquidation of creditor claims. This is contrary to the spirit of the Bankruptcy Code and fresh start policy. construction of the Bankruptcy Act is similarly clear. The Supreme Court has stated that ‘(o)ne of the primary purposes of the Bankruptcy Act’ is to give debtors “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.” See [Local Loan Co. v. Hunt](#), 292 U.S. 234, 244, 54 S. Ct. 695, 78 L. Ed. 1230, 93 A.L.R. 195 (1934).
- 4 State and federal exemption statutes are to be liberally construed for benefit of debtor. [In re Stanhope](#), 76 B.R. 165 (Bankr. D. Mont. 1987).

- 5 See, e.g., *In re Caron*, 82 F.3d 7, 10 (1st Cir. 1996); *KLC, Inc. v. Trayner*, 426 F.3d 172, 176 (2d Cir. 2005); *Matter of Barker*, 768 F.2d 191, 196, Bankr. L. Rep. (CCH) ¶ 70653 (7th Cir. 1985). *In re Ladd*, 450 F.3d 751, Bankr. L. Rep. (CCH) ¶ 80520 (8th Cir. 2006); “Exemptions should be liberally construed in furtherance of debtor’s right to a fresh start, although a “fresh start” does not translate to a “head start.” 11 U.S.C.A. §§ 522, 541. *In re Cintron*, 499 B.R. 209 (Bankr. D. P.R. 2013). Tristen Axelrod suggests that states should do a better job in studying and accounting for the effects of their own exemption policy implementation, but also that legislators and scholars should be “wary” of uniformity in consumer bankruptcy without better data examining debtor behavior. Axelrod, *Defending State Exemptions in Bankruptcy*, 27 *Loy. Consumer L. Rev.* 284, 332 (2015). The issue remains that consumer debtor statistics are difficult to track and quantify with dismissal and conversions of consumer cases.
- 6 Following the U.S. Civil War, a major debate was posed on whether Agrarian interests should remain a focus of bankruptcy law, and/or whether federal power over debt collection should be increased or decreased, some states even permitted stacking of federal and state bankruptcy exemptions. Ponoroff, *Constitutional Limitations on State-Enacted Bankruptcy Exemption Legislation and the Long Overdue Case for Uniformity*, 88 *Am. Bankr. L.J.* 353, 363–68 (2014). State exemption laws seek to balance benefits between the parties. Since the mid 1990’s though, there has been extensive focus on abuse, but it has rarely been a statistically significant problem, if ever. Axelrod, 27 *Loy. Consumer L. Rev.* at 323–28.
- 7 The bankruptcy discharge is a legislatively created benefit, not a fundamental right. *In re Anthonys*, 539 B.R. 820, 832 (Bankr. D. Alaska 2015); 11 U.S.C.A. §§ 524(a), 727(a). “The fresh start is not absolute, and bankruptcy courts must provide fair treatment to creditors.” See also *In re Smith*, 592 B.R. 390, 66 Bankr. Ct. Dec. (CRR) 106 (Bankr. N.D. Ga. 2018); *Grogan v. Garner*, 498 U.S. 279, 286–87, 111 S. Ct. 654, 112 L. Ed. 2d 755, 21 Bankr. Ct. Dec. (CRR) 342, 24 *Collier Bankr. Cas.* 2d (MB) 1, Bankr. L. Rep. (CCH) ¶ 73746A, 70 A.F.T.R.2d 92-5639 (1991).
- 8 Koffler, 58 *N.Y.U.L. REV.* 22, 53. Although from the time the 1867 Bankruptcy Act was repealed in 1878, until 1898, the United States operated without a form of federal bankruptcy law. Since 1898, bankruptcy has been an issue of “national jurisprudence” which continues to be dominated by state exemption law.
- 9 *Butner* principle—*Butner v. U.S.*, 440 U.S. 48, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136, 19 C.B.C. 481, Bankr. L. Rep. (CCH) ¶ 67046 (1979). Apart from certain special provisions, the Bankruptcy Act generally leaves the determination of property rights in the assets of a bankrupt’s estate to considerations under state law.
- 10 Axelrod, 27 *Loy. Consumer L. Rev.* at 322.
- 11 Koffler, 58 *N.Y.U.L. REV.* at 26, 29. (Whether by choice or not “absence of federal interest in creating order from the chaos of state laws reflects general scholarly acceptance of the *Moses* doctrine”).
- 12 Sullivan describes the factors as “not formulaic, but rather principled.” Because the states vary in economic/practical conditions, determining a monolithic set of exemptions is difficult to determine. Factors Sullivan references as potentially impacting exemption considerations include labor market, transportation infrastructure, tax policy, costs of housing and more. Sullivan, *A Fresh Start to Bankruptcy Exemptions*, 2018 *B.Y.U. L. Rev.* 335, 389 (2018).
- 13 Many states (and the federal exemptions) do address this issue directly by updating exemption laws every “x” number of years based on inflation and the consumer price index. Alabama, Arizona, Alaska, California, Indiana, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, New York, New Mexico, Ohio, South Carolina, Utah, periodically adjust their statutory exemption limits for inflation. A useful map with periods of adjustment is available. Legal Consumer, (Updated: January 17, 2023) https://www.legalconsumer.com/bankruptcy/topic_50_state.php?TopicID=822.
- 14 Christenson, *Personal Property Exemptions and the Uniform Exemptions Act*, 1978 *B.Y.U. L. Rev.* 462, 466 (1978).
- 15 Levinthal, *The Early History of Bankruptcy Law*, 66 *U. Pa. L. Rev.* 223, 237 (1918) (describing that the Code of Hammurabi protected debtors’ life and freedom when they were otherwise made insolvent

by misfortune. Islamic law also provided definite amounts to debtors in the form of exemptions); See also Mendales, *supra* note 1, at 854 (dating exemption law as far back as Roman law). Welsh law in the Middle Ages placed specific values on household possessions which were vividly detailed under separate categories such as status of the individual, rarity of an apple on a person's apple tree, etc. Ellis, *Welsh Tribal Law and Custom in the Middle Ages*, The Oxford Clarendon Press (1926) at 29.

- 16 Yunker, [The General Exemption of Section 522\(d\)\(5\) of the 1978 Bankruptcy Code](#), 49 U. Chi. L. Rev. 564, 571 (1982) (Exemptions have a mutually supportive role in practicality and humanitarian efforts, they avoid need for direct public support).
- 17 “There is no doubt but that humanity requires a liberal and charitable construction of the exemption laws[.]” Herman, 21st Ed. Treatise on the Law of Executions (1876) at 118–119.
- 18 Congress has the authority to enact “uniform laws on the subject of bankruptcies.” U.S. CONST. art. I, § 8, cl. 4.
- 19 See Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (repealed 1978). The uniform federal bankruptcy exemptions were abandoned entirely for state-based exemption laws.
- 20 The Bankruptcy Act of 1898 went into effect July 1, 1898, with a purpose to “not affect the allowance of bankrupts of the exemptions which are prescribed by the state laws.” See 30 Stat. at L. 544, chap. 541 at Section 6. The 1898 Act incorporated disuniform exemptions imposed by states with federal exemption laws. Koffler, 58 N.Y.U.L. REV. at 23–26.
- 21 In *Moyses*, Justice Fuller determined that “the system is in the constitutional sense, uniform throughout the United States, when the trustee takes in each State whatever would have been available to the creditors if the bankrupt law had not been passed. The general operation of the law is uniform although it may result in certain particulars differently in different States.” *Hanover Nat. Bank v. Moyses*, 186 U.S. 181, 22 S. Ct. 857, 861, 46 L. Ed. 1113 (1902).
- 22 The 1898 Act remained in place until 1978 as one of the first federal laws which was put into place as a response to economic and industrial growth of the nation, rather than crisis. Mass production of vehicles increased in the early 20th century, which led to increased job markets before the Great Depression. Personal transportation and trucking by motor vehicles starkly increased through the 1930's, while freight prices skyrocketed, railroads were hemorrhaging dollars. Hurst (Edited by Ard & Novak), Feature: Chapter Eight [Technology and the Law: The Automobile](#), 2022 Wis. L. Rev. 463, 466–82 (2022). “[B]y 1939, one third of the nation's rail mileage was in receivership.” Congress needed stability of infrastructure as transportation needs changed. Dempsey, [Transportation: A Legal History](#), 30 Transp. L. J. 235, 240 (2003). Axelrod, 27 Loy. Consumer L. Rev. at 303–04. The resulting Great Depression, industrialization, and agricultural crisis led to much of the economic disorder necessitating bankruptcy reform in the latter half of the 20th century. Axelrod, 27 Loy. Consumer L. Rev. at 312–16.
- 23 See Bankruptcy Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 § 522 (1978) (codified as amended in 11 U.S.C.A.).
- 24 The suggested restoration of federal exemptions refers to the Bankruptcy Act of 1800 which imposed a uniform federal rule governing property exemptions—categorically replacing exemption policies of the states. Koffler, 58 N.Y.U.L. REV. at 43. While the 1800 act was short lived and ultimately repealed in 1803, there was “vigorous advocacy” for uniform federal bankruptcy law during the early 19th century. Koffler, 58 N.Y.U.L. REV. at 44. The following Bankruptcy Act of 1841 revived the 1800 Act's uniform treatment of exempt property, preventing states from taking independent measures which could be seen as an attempt to “encumber uniformity” of the 1841 Act. Act for the Regulation of Bankruptcy, § 24 (1785), discussed in Warren, *Bankruptcy in United States History* 6, page 82 (1935).
- 25 Woodward, [Exemptions, Opting Out, and Bankruptcy Reform](#), 43 Ohio St. L.J. 335, 365 (1982). The constitutionality/uniformity of the “opt-out” provision has been widely discussed, but the general view is

because the 1898 Act was deemed constitution through the *Moyses* holding, the opt out provision *likely* is justifiable as such. [Moyses](#), 181, 22 S. Ct. 857.

- 26 Mendales [40 B.C. L. Rev. at 854](#). “§ 522 is based not on a coherent attempt by Congress to accomplish the purposes described above, but on an accretion of past law from highly diverse sources, aggravated by a serious wrong turn taken by Congress in 1898.” See Commission on the Bankr. Laws of the U.S., Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. I, at 171 (1973).
- 27 [Moyses](#), 186 U.S. 181 at 190.
- 28 Transportation is important when mentioning the 1978 Act as a compromise because transportation is funded by federal, state, and local governments. Dempsey, [30 Transp. L. J. at 363–64](#).
- 29 The 1978 act recognized the states' individual interests in regulating credit within their states, but “enunciate[d] a bankruptcy policy favoring a fresh start.” [H.R. REP. 95-595 at 6087](#). See Exemptions. “SECTION 522 of the house amendment represents a compromise on the issue of exemptions between the position taken in the house bill, in that taken in the Senate amendment. Dollar amount specified in section 522(D) of the house bill have been reduced from amounts as contained in H.R. 8200 as passed by the house. The States may, by passing a law, determine whether the federal exemptions will apply as an alternative to state exemptions in bankruptcy cases.” [H.R. REP. 95-595 at 6452–6453](#). 611 EARLIER FEDERAL BANKRUPTCY LAWS SET THE AMOUNT OF EXEMPTIONS. HEARINGS, SUPP. APP. PT. 1, AT 12, 16 (ACT OF 1800), 34 (ACT OF 1867).
- 30 Woodward, [43 Ohio St. L.J. at 345](#) (The opt-out states made their intent blatantly clear at the onset: “to deprive domiciled debtors of the federal bankruptcy exemptions.”).
- 31 [11 U.S.C.A. § 522](#).
- 32 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), [Pub. L. No. 109-8, 119 Stat. 23](#), was enacted on April 20, 2005.
- 33 Markley & Liu, The Effect of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on Credit Card Delinquency Rates, Princeton University, Dep't of Economics, (2020) at 1-4.
- 34 Examples of barriers imposed by BAPCPA include: repeat filing limits, § 109(h)(4) and [§ 727\(a\)\(11\) of the bankruptcy code](#) require a debtor to complete both prepetition counseling with 180 days of filing, and postpetition financial management counseling within 45 days of the debtor's § 341 hearing (for a cost), increased filing fees, additional audits, limits on types dischargeable debts (student loans, domestic support, etc.), and a plethora of required certification/documents. [11 U.S.C.A. § 521\(i\)](#). Many of the barriers presented, also make it more difficult for debtors to navigate bankruptcy pro se, while simultaneously deterring attorneys from taking cases either for fee or pro bono. MacArthur, [Pay to Play: The Poor's Problems in the BAPCPA](#), 25 *Emory Bankr. Dev. J.* 407, 433 (2009).
- 35 “[R]eferences to “the poor” in bankruptcy were dismissed. This upholds the common trend furthering policy in which the middle class issues receive greater recognition than the “long term poor”). Kalsem's article discusses the larger concerns of bankruptcy in capitalism, and why little attention has focused on the actual needs of the insolvent. “The widespread failure of the middle class would undermine the capitalist creed that economic progress is inevitable: that hard-working people inevitably succeed and that the American middle class is hardworking. Kalsem, [Bankruptcy Reform and the Financial Well-Being of Women: How Intersectionality Matters in Money Matters](#), 71 *Brook. L. Rev.* 1181, 1200–13 (2006).
- 36 [11 U.S.C.A. 708\(b\)](#) [Pub. L. 109-9](#), § 102(a)(2).
- 37 Martin, [Bringing Relevancy Back to Consumer Bankruptcy](#), 36 *Emory Bankr. Dev. J.* 581, 587 (2020) (describing the consequences of consumer credit as ranging from “extraordinarily positive to inordinately negative.” See also Persad, Article: [Bankruptcy Beyond Status Maintenance](#), 11 *Va. L. & Bus. Rev.* 451, 464 (2017) (federal exemptions do not *explicitly* claim to maintain a debtor status, but they do

serve function in some ways to preserve a debtor's economic status. This would, in theory, include ability to contribute to local and national commerce following “rehabilitation”); A debtor's most valuable asset is often their earning capacity. Eisenberg, *Bankruptcy Law in Perspective*, 28 UCLA L. Rev. 953, 983 (1981). Therefore, employment and potential for future earnings should be considered as form of rehabilitation for debtors emerging from bankruptcy.

- 38 Koffler, 58 N.Y.U.L. REV. at 66. Property of a debtor is either exempt, or available to distribute to creditors and non-exempt—a policy that has been considered in almost all forms of bankruptcy law internationally. Yet, several forms of bankruptcy exist without the grant of a discharge. Koffler, 58 N.Y.U.L. REV. at 66 n.215.
- 39 Koffler, 58 N.Y.U.L. REV. at 32. State law alone cannot shape bankruptcy exemption policy because the primary state considerations are 1) impairment of contractual rights; 2) satisfaction of unpaid debts; and 3) individual liquidation of creditor claims. This is contrary to the spirit of the Bankruptcy Code and fresh start policy. construction of the Bankruptcy Act is similarly clear. The Supreme Court has stated that ‘(o)ne of the primary purposes of the Bankruptcy Act’ is to give debtors “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.” See *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 78 L. Ed. 1230, 93 A.L.R. 195 (1934).
- 40 “Exemptions should be liberally construed in furtherance of debtor's right to a fresh start, although a “fresh start” does not translate to a “head start.” 11 U.S.C.A. §§ 522, 541. In re Cintron, 499 B.R. 209 (Bankr. D. P.R. 2013). Axelrod suggests that states should do a better job in studying and accounting for the effects of their own exemption policy implementation, but also that legislators and scholars should be “wary” of uniformity in consumer bankruptcy without better data examining debtor behavior. Axelrod, 27 Loy. Consumer L. Rev. at 332. The issue remains that consumer debtor statistics are difficult to track and quantify with dismissal and conversions of consumer cases.
- 41 In re Trafford, 377 B.R. 387 at 392.
- 42 See In re Waag, 418 B.R. 373, 377 (B.A.P. 9th Cir. 2009) (noting BAPCPA's limitation on chapter 13's “superdischarge”).
- 43 See, e.g., In re Munao, 2008 WL 4602352, at *1 (Bankr. M.D. Fla. 2008) (discussing Florida's constitutional exemptions); In re Criswell, 152 B.R. 264, 265 (Bankr. E.D. Ark. 1992) (discussing Arkansas constitutional exemptions).
- 44 The bankruptcy discharge is a legislatively created benefit, not a fundamental right. In re Anthonys, 539 B.R. 820, 832 (Bankr. D. Alaska 2015); 11 U.S.C.A. §§ 524(a), 727(a). “The fresh start is not absolute, and bankruptcy courts must provide fair treatment to creditors.” See also In re Smith, 592 B.R. 390, 66 Bankr. Ct. Dec. (CRR) 106 (Bankr. N.D. Ga. 2018); Grogan v. Garner, 498 U.S. 279, 286–87, 111 S. Ct. 654, 112 L. Ed. 2d 755, 21 Bankr. Ct. Dec. (CRR) 342, 24 Collier Bankr. Cas. 2d (MB) 1, Bankr. L. Rep. (CCH) ¶ 73746A, 70 A.F.T.R.2d 92-5639 (1991). Prior to BAPCPA, the Supreme Court expressed a similar limited view of discharge: “The fresh start is not absolute, and bankruptcy courts must provide fair treatment to creditors.” Grogan v. Garner, 498 U.S. 279, 286–87, 111 S. Ct. 654, 112 L. Ed. 2d 755, 21 Bankr. Ct. Dec. (CRR) 342, 24 Collier Bankr. Cas. 2d (MB) 1, Bankr. L. Rep. (CCH) ¶ 73746A, 70 A.F.T.R.2d 92-5639 (1991).
- 45 Under § 522, if the debtor resided in more than one state during the previous two years, the debtor will be forced to utilize the exemptions of the debtor's domicile (majority of 180 days) prior to the 730-day period. 11 U.S.C.A. § 522(b)(3).
- 46 The Supreme Court has long recognized that a chief purpose of the bankruptcy laws is “to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.” Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 15 L. Ed. 2d 391, 9 Fed. R. Serv. 2d 38A.2, Case 6 (1966). See In re Wright, 591 B.R. 68, 95 (Bankr. N.D. Okla. 2018) (citing In re Lewis, 309 B.R. 597, 602 (Bankr. N.D. Okla. 2004), discussing full and candid disclosure, and that these requirements apply to debtors, creditors, attorneys, and third parties). “All bankruptcy law, however, no matter when or where devised and enacted, has at least, two general objects in view. It aims, first, to secure an equitable

division of the insolvent debtor's property among all his creditors, and, in the second place, to prevent on the part of the insolvent debtor conduct detrimental to the interests of his creditors. In other words, bankruptcy law seeks to protect the creditors, first, from one another and, secondly, from their debtor. A third object, the protection of the honest debtor from his creditors, by means of the discharge, is sought to be attained in some of the systems of bankruptcy, but this is by no means a fundamental feature of the law." Levinthal, 66 U. Pa. L. Rev. at 225.

- 47 "Absent some reason for departing from state law, bankruptcy rules can and usually do track state rules." Eisenberg, 28 UCLA L. Rev. at 956. "Whether state or federal law is presumptively the proper base, Congress ought to have articulable reasons for imposing a rule that differs from the base." Brown, [Political and Ethical Considerations of Exemption Limitations: The Opt-Out as Child of the First and Parent of the Second](#), 71 Am. Bankr. L.J. 149, 182 (1997). Brown describes the risks of § 522 not establishing a federal floor, which at minimum, creates risk of disparity and destruction of uniformity. See also Koffler, 58 N.Y.U.L. REV. at 89–90 describes a "trap door" created by the opt-out provisions under § 522.
- 48 Eisenberg, 28 UCLA L. Rev. at 971.
- 49 This statement refers to a comparison for lawmaking/exemption value purposes, rather than venue shopping itself.
- 50 In the 1978 Bankruptcy Act's enactment, § 522 (d)(b)(2) permitted the debtor's interest, not to exceed \$1,200 in value, in one motor vehicle. (Pub. L. 95-598, Nov. 6, 1978). 92 STAT. 2587. Vukowich, Debtors' Exemption Rights, 62 Geo. L. J. 779, 828–29 (1974) (discussing that a number of states explicitly exempt a debtor's vehicle around 1973. Vukowich goes on to describe statutes in place at the time considered "unreasonably low in value considering the values of today's (1973–1974) automobiles). Values listed for states' existing automobile exemptions around 1974 include: Colorado (\$300.00), Nevada (\$1,000.00), Oregon, (\$400.00). Vukowich, 62 Geo. L. J. at 828–29, n.299. Articles discussing the inequities states lacking automobile exemptions, are prevalent early as 1961. Rombauer, Debtor's Exemption Statutes—Revision Ideas, 36 Wash. L. Rev. & St. B. J. 484 (1961) (asserting exemption statutes should "be a product of compromises among interested groups" and consider the interests of all). As early as 1982, Yunker describes the existence of most states' motor vehicle exemptions. "Most modern exemption statutes also contain allowances for various forms of personal income, life insurance, and a motor vehicle, but otherwise differ from the traditional statutes only in their broader definitions of essentially the same 'preferred' categories." Yunker, 49 U. Chi. L. Rev. at 571.
- 51 While New Jersey and Pennsylvania do *not* provide motor vehicle exemptions within their state law, they do permit debtors to opt into the federal exemptions and will therefore be included as states that do provide a motor vehicle exemption through federal law.
- 52 Hunt, [Help or Hardship?: Income-Driven Repayment in Student-Loan Bankruptcies](#), 106 Geo. L.J. 1287, 1300–02 (2018).
- 53 Woodward, 43 Ohio St. L.J. at 368. Public policy encourages productivity of debtor through exemptions such as "tools of the trade" and restrictions on wage garnishments—which are both controlled by state laws. Overall, the goal remains the same: to prevent destitution of the individual, and their family by providing adequate exemptions in and outside of bankruptcy. Woodward, 43 Ohio St. L.J. at 335–37.
- 54 Lanning, The Importance of Cars and Car Loans for People with Low and Moderate Income, July 15, 2022. <https://www.chicagofed.org/publications/blogs/cdps/2022/importance-cars-and-car-loans#ftn2> (indicating that around 65% of Americans own homes, but more than 91% of households have at least one vehicle. In all, there are about 284 million cars registered in the United States).
- 55 Pardo describes bankruptcy relief as an "indispensable condition for securing the personal liberty that lies at the heart of U.S. citizenship. His article suggests that bankruptcy laws serve as a strategy to provide financial freedom, rather than inflicting consequences for poor borrowing choices. Participation

of individuals is key to a successful economy. Pardo, [Financial Freedom Suits: Bankruptcy, Race, and Citizenship in Antebellum America](#), 62 *Ariz. L. Rev.* 125, 132 (2020).

- 56 Carts, ploughs, wagons, and harrows have been considered in detail even in early Welsh law valuing assets. Ellis, *Welsh Tribal Law and Custom in the Middle Ages*, The Oxford Clarendon Press (1926) at 380. The purpose of transportation is a goal of “mobility.” “Accessibility” provides more than physical mobility, but also encourages “reaching places,” jobs, schools, grocery stores, further highlighting the important purpose of transportation and accessibility. Shill, [The Future of Law and Transportation](#), 106 *Iowa L. Rev.* 2107, 2116 (2021).
- 57 Even when only affluent individuals possessed wagons, wagons were classified as an exemption in an effort to protect teamsters, or those who “use a team to obtain a livelihood.” Herman, 21st Ed. *Treatise on the Law of Executions* (1876) at 115. This is comparable to modern day “tool of the trade” exemptions some states provide for. Exemptions have been largely seen as a strategy to protect not just the owner of the property, but as a means to benefit the debtor's family for which he provided necessities for. Herman, 21st Ed. *Treatise on the Law of Executions* (1876) at 115. Many state statutes provided for a transportation exempt from levy by creditors in the form of a “yoke of oxen” and/or a “span of horses” even prior to wagon exemptions. [S.D.C.L. § 43-45-5](#), 1997 South Dakota Code Archive. Note that car ownership is a symbol of “independence, success, and social status.” Wilson, Study: How Car Ownership is Keeping Americans From Financial Stability, StreetBlog USA (March 25, 2024).
- 58 The automotive industry remains one of the most important industries in the United States. “Thus we find in the automobile industry-one of the newest and most important industries in the country[.]” In 1899, \$5,000,000 worth of automobiles were sold in the United States, deeming it one of the largest and most concentrated industries in the United States. Laidler, *Concentration of Control in American Industry* (1931), at 190.
- 59 Foohey, et. al., [Driven to Bankruptcy](#), 55 *Wake Forest L. Rev.* 287, 290 (2020). Hurst 2022 *Wis. L. Rev.* at 466 (discussing how the automobile had become deeply entrenched in the United States economy by the 1920's, and by 1940, most passenger transportation was by motorcar).” Transportation has historically been identified as an industry “affected with a public interest.” Dempsey, 30 *Transp. L. J.* 235 at 363.
- 60 Social pressures and necessity contribute to necessity of a vehicle. An estimated 80% of Americans reported they had “no choice but to drive as much as they do.” Wilson, Study: How Car Ownership is Keeping Americans From Financial Stability, StreetBlog USA (March 25, 2024).
- 61 “Social scientists and policymakers have long known that inadequate transportation contributes significantly to the economic isolation that plagues America's inner cities.” Garnett describes how public transportation (or lack thereof) has the ability to seriously restrict disadvantages areas. “Transportation affects job prospects of the urban poor.” Garnett, [The Road from Welfare to Work: Informal Transportation and the Urban Poor](#), 38 *Harv. J. on Legis.* 173, 176–182 (2001). As early as 1933, the Federal government took concerted action to effectuate coordination of the several transport modes. Dempsey, [The Law of Intermodal Transportation: What It Was, What It Is, What It Should Be](#), 27 *Transp. L. J.* 367, n. 23 (2000).
- 62 Foohey, et al., 55 *Wake Forest L. Rev.* at 287.
- 63 Foohey, et al., 55 *Wake Forest L. Rev.* at 289.
- 64 Rural residents are less likely to move than urban residents, more likely to drive older vehicles, and engage in more trips per day. These types of longer distance trips for basic needs create a greater reliance on rural residents who average more miles on their vehicles per year than urbanites. Mattson, *Rural Transit Fact Book*, NDSU Upper Great Plains Transportation Institute Small Urban and Rural Transit Center (October 2017). <https://www.ugpti.org/resources/reports/downloads/2017-rural-transit-fact-book.pdf>. Urban workers are earning increasingly more than rural workers with

equivalent education backgrounds. However, rural residents are often culturally tied to their community (proximity to family) and/or natural amenities, and therefore more likely content remaining in rural areas while sacrificing overall earnings or upward potential. Marre, Urban Areas Offer Higher Earnings for Workers with More Education, U.S.D.A. Economic Research Service (July 3, 2017), <https://www.ers.usda.gov/amber-waves/2017/july/urban-areas-offer-higher-earnings-for-workers-with-more-education/#:~:text=Earnings%20in%20rural%20areas%20ranged,a%20graduate%20or%20professional%20degree>. Rural states such as Wyoming, Montana, North Dakota, Alaska, South Dakota, and Idaho have been reported to have some of the highest average used car prices. Betterton, What's Your State's Average Car Loan Balance, Bankrate, (May 31, 2024).

- 65 NMVE states make up a substantial portion of rural communities. South Dakota has the highest proportion of rural residents in the Midwest. According to the 2011–2015 census, 42.9% of the population in South Dakota is considered rural. United States Census Bureau, Rural America 2010, <https://mtgis-portal.geo.census.gov/arcgis/apps/storymaps/stories/ec70b11a00834c12bd7c9777d76b7a04#n-Zx9nXH>.
- 66 Sullivan, Transportation & Work: Exploring Car Usage and Employment Outcomes in the LSAL Data 21, National Center for the Study of Adult Learning and Literacy, Harvard Graduate School of Education, 15 (June 2003). Available at: <https://files.eric.ed.gov/fulltext/ED508599.pdf>.
- 67 MacArthur, 25 Emory Bankr. Dev. J. at 464.
- 68 Foohey, Consumers' Declining Power in the Fintech Auto Loan Market, 15 Brook. J. Corp. Fin. & Com. L. 5 (2020).
- 69 Foohey 55 Wake Forest L. Rev. at 291 (describing that in 2018 31% of new auto loan originations went to borrowers with subprime (<660) credit scores). Subprime lenders have claimed to intend 35% of the cars it lends against. Foohey 15 Brook. J. Corp. Fin. & Com. L. 5 at 292. Car dependent landscapes make driving non-negotiable in rural communities, and as a result, consumers are more tempted to purchase cars beyond their means in a setting where they feel they have no other options to purchase a reliable vehicle. Wilson, Study: How Car Ownership is Keeping Americans From Financial Stability, StreetBlog USA (March 25, 2024).
- 70 Lanning, The Importance of Cars and Car Loans for People with Low and Moderate Income, July 15, 2022. <https://www.chicagofed.org/publications/blogs/cdps/2022/importance-cars-and-car-loans#ftn2>. The length of term auto loans has been linked directly to credit score of the borrower. “The credit scores of borrowers taking out loans with terms of six years or longer are notably lower than scores of borrowers who take out five-year loans. The average credit score for borrowers who take out six-year loans is 674, which is 39 points below the average for borrowers who take out five-year loans.” Some of the extended loan periods could be due to the overall increasing costs of vehicles. However, borrowers with higher credit scores tend to finance higher cost vehicles for shorter terms (likely due to larger down payments). Consumer Financial Protection Bureau, CFPB Report Finds Sharp Increase in Riskier Longer-Term Auto Loans, November 1, 2017. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-sharp-increase-riskier-longer-term-auto-loans/#:~:text=Longer%2Dterm%20auto%20loans%20have,to%20result%20in%20a%20default.#:~:text=Longer%2Dterm%20auto%20loans%20have,to%20result%20in%20a%20default>.
- 71 “The most common terms [for car loans] are 60 and 72 months, but 84-month terms are becoming more common.” Betterton, What's Your State's Average Car Loan Balance, Bankrate, (May 31, 2024).
- 72 Disabling devices have been implemented to disable cars' starting mechanisms on certain subprime loan vehicles upon loan default. If the borrower does not pay following shut off, a GPS device will track the car's location for repossession. See Sweeting, Disabling Disabling Devices: Adopting Parameters for Addressing a Predatory Auto-Lending Technique on Subprime Borrowers, 59 How. L.J. 817 (2016).

- 73 Individuals will often prioritize repayment of their personal auto loans over other debts because the loss of a vehicle creates an immediate threat of a person's livelihood, primarily in the form of access to employment. Whereas, home foreclosure can take weeks, months, or even years in some instances. Foohey, [55 Wake Forest L. Rev. at 8, 41](#).
- 74 Deficiency suits often lead to garnishment of wages long after the debtor's vehicle is repossessed. Foohey, [55 Wake Forest L. Rev. at 292](#).
- 75 Individuals will often prioritize payment of auto loans over other debts because loss of a vehicle leads to immediate threat of a person's livelihood in the form of access to employment. Whereas, home foreclosure can take weeks, months, or even years in some instances. Foohey, [15 Brook. J. Corp. Fin. & Com. L. at 8](#).
- 76 Credit Acceptance reported that it expects to repossess approximate 35% of all the cars it finances each year. Foohey, [55 Wake Forest L. Rev. at 291–92](#). Foohey goes on to describe how the “expansion of the auto loan market spawned ominous forecasts that auto lending might be the next housing bubble. Foohey, [55 Wake Forest L. Rev. at 293](#). Payday loans and other voluntary liens on vehicles often serve to trap debtors in a downward spiral of debt. Sweeting, [59 How. L.J. at 837](#). “Auto loans are the second most common driver of accumulated bad [most defaulted] debt [.]” Martin, [36 Emory Bankr. Dev. J. at 586](#).
- 77 § 1325(a)(9) states: section 506 (determination of secured status) shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.
- 78 Also applies to personal property.
- 79 § 1325(a)(9).
- 80 Most *new* cars sold for around \$750.00 between 1925 and 1940. Prices remained low due to the Ford assembly line technology. This pricing system made motor vehicles more accessible to a wider range of income earning individuals, spiking ownership rates with affordability. The average *used* car price was \$308 in 1923. In 1940, the average used car price was \$347. Hurst [2022 Wis. L. Rev. at 466](#).
- 81 Production of motor vehicles rapidly changed when Henry Ford created the assembly line in 1913. This “revolutionized” the industry, allowing for quicker and cheaper production of parts and output. By 1920, the automobile had replaced the horse and carriage as the primary means of transpiration across America. 7 Collier Bankruptcy Practice Guide P 131.02 (2024) (citing Douglas Brinkley, *Wheels for the World: Henry Ford, His Company and a Century of Progress*, 62–63 (2003)).
- 82 To put this into modern perspective on used car price changes, a \$39 increase for a used car over a 17-year span would mean a car in 2023 should be about \$257.59 more than a vehicle in 2006 when adjusted for inflation. CPI Inflation Calculator, Bureau of Labor Statistics (accessed October 13, 2023), <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=39&year1=197401&year2=202309>. The average used vehicle price in 2006 was around \$8,000.00. Office of U.S. Dep't. of Energy, Energy Efficiency & Renewable Energy, Vehicle Technologies Office, *Average New Light Vehicle Price Grows Faster Than Average Used Light Vehicle Prices*, <https://www.energy.gov/eere/vehicles/fact-744-september-10-2012-average-new-light-vehicle-price-grows-faster-average-used> (September 10, 2012). The average used car in 2023 is around \$27,000.00. Preston, *Used-Car Prices Remain High, Making Buying a Challenge*, Consumer Reports (August 29, 2023).
- 83 2020 provided a global shortage of automotive chips for vehicles, leading to an increase in used vehicle prices by almost 40% (\$29,000.00). The shortage of these chips, which contribute to numerous factors in vehicle functionality (such as transmissions, radios, gas pedals, etc.), played a large role in decreased production of vehicles during the pandemic. Krisher, *As Car Prices Soar Beyond Reach, Americans Keep*

Their Vehicles Longer Than Ever, USA Today, <https://www.usatoday.com/story/money/cars/2023/05/15/new-used-car-prices-soar-forcing-drivers-keep-vehicles-longer/70220510007/>, (May 15, 2023).

- 84 Insurance, maintenance (oil changes, registration, etc.), have increased dramatically in the last several years. These costs of operation are then passed onto buyers. How Car Ownership Got So Expensive, Today, Explained (Podcast) (April 17, 2024).
- 85 Krisher indicates the average vehicle on the road hit 12.5 years in 2023. The average used vehicle payment is around \$563.00. Krisher, As Car Prices Soar Beyond Reach, Americans Keep Their Vehicles Longer Than Ever, USA Today, <https://www.usatoday.com/story/money/cars/2023/05/15/new-used-car-prices-soar-forcing-drivers-keep-vehicles-longer/70220510007/>, (May 15, 2023).
- 86 A debtor exempts “property,” not equity or value itself. See also *In re Thacker*, 5 B.R. 592, 595 (Bankr. W.D. Va. 1980). 11 U.S.C.A. § 522(d). Under the Bankruptcy Code the debtor's property vests first in the estate and is then subject to being excluded by the debtor claiming the appropriate exemption within the debtor's bankruptcy schedules. 11 U.S.C.A. § 522(d).
- 87 “Lawful” in this context means without the “intent to hinder, delay, or defraud a creditor.” 11 U.S.C.A. § 727(a)(2). Prebankruptcy planning includes the conversion of nonexempt assets to exempt assets. This type of planning is implicitly permitted within reason and such conversion of assets on the eve of filing bankruptcy will not necessarily bar a discharge under § 727(a)(2) without requisite intent. See Ponoroff & Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy: Villains or Victims of the Fresh Start?*, 70 N.Y.U. L. Rev. 235 (1995) (arguing for a property view of prebankruptcy assets). However, a debtor is still expected to disclose the transfer/conversions of such assets on the Statement of Financial Affairs. These strategies can be justified as an essential way to balance the scales of equity between debtors and creditors (i.e., rewarding lenders for over extension of risky credit increases risk for future lending risks). See also Engledow, *Cleaning up the Pigsty: Approaching a Consensus on Exemption Laws*, 74 Am. Bankr. L.J. 275, 276 (2000).
- 88 Kelly Blue Book “Private Party” value of a “very good” condition 2013 Ford Focus with 100,000 miles. <https://www.kbb.com/ford/focus/2013/s-sedan-4d/?condition=verygood&extcolor=silver&intent=trade-in-sell&mileage=100000&modalview=false&options=6518963%7cttrue&pricetype=private-party&vehicleid=377829>
- 89 Kelly Blue Book “Private Party” value of a “very good” condition 2022 BMW X3 with approximately 100,000 Miles. <https://www.kbb.com/bmw/x3/2022/sdrive30i-sport-utility-4d/?vehicleid=458298&mileage=100000&modalview=false&intent=trade-in-sell&pricetype=trade-in&condition=verygood&options=10520578%7cttrue&extcolor=gray>
- 90 Vehicles can be expected to drop as much as 20% in the first year of ownership. After 5 years, a car will be worth about 40% of the purchase price. Popely, Car Depreciation: How Much Value Does a Car Lose per Year?, Carfax, February 3, 2021. The creation of a security interest forecloses further possibility of the debtor to continue to convert the asset. Ponoroff & Knippenberg, 70 N.Y.U. L. Rev. at 317.
- 91 Profit margins can reach 40% for “buy here, pay here,” dealerships. These profit margins create a moral hazard because the dealership can still profit whether the individual follows through with loan payments or not. Bensinger, A Vicious Cycle in the Used Car Business, Los Angeles Times (October 30–November 2, 2011). <https://www.latimes.com/projects/la-fi-buyhere-payhere/> Higher default rates correspond with higher interest rates. CFPB found that the same borrower would have the same default rate regardless of whether a loan was obtained from a bank/credit union or buy here, pay here, dealership. However, the interest rate would be lower and ultimately cost the borrower less money from the bank. Unsophisticated borrowers are often unaware of strategies to obtain the best terms, and subprime lenders have found ways to exploit complexities of auto loan terms through manipulation of monthly payments, or price of the vehicle at face value which result in overall higher costs of loans. Clarkberg, Gardner, & Low, Data Point: Subprime Auto Loan Outcomes by Lender Type, Consumer Financial Protection Bureau (September 2021). https://files.consumerfinance.gov/f/documents/cfpb_subprime-auto_data-point_2021-09.pdf

- 92 The “fresh start” objectives are frequently referenced and facially clear but “as is the case with many widely employed truisms, common acceptance of the phrase tends to obscure the elusiveness of its content.” Hallinan, [The Fresh Start Policy in Consumer Bankruptcy: A Historical Inventory and an Interpretive Theory](#), 21 U. Rich. L. Rev. 49, 51 (1986). A debtor in bankruptcy needs relief from past obligations through their discharge of debt to ensure social and economic productivity, but a debtor also requires “new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of persistent debt.” Ponoroff & Knippenberg, 70 N.Y.U. L. Rev. at 240; [Local Loan Co. v. Hunt](#), 292 U.S. 234, 244, 54 S. Ct. 695, 78 L. Ed. 1230, 93 A.L.R. 195 (1934); Woodward, 43 Ohio St. L.J. at 365; See [Ransom v. FIA Card Services, N.A.](#), 562 U.S. 61, 131 S. Ct. 716, 725, 178 L. Ed. 2d 603, 54 Bankr. Ct. Dec. (CRR) 34, 64 Collier Bankr. Cas. 2d (MB) 1123, Bankr. L. Rep. (CCH) ¶ 81914 (2011) (holding a debtor who does not make loan/lease payments is not entitled to the car ownership deducting in calculating disposable income under the means test, even if the debtor is in imminent need of a more reliable vehicle)(car ownership encompasses the costs of a car loan/lease for means test purposes and *nothing* more).
- 93 While extreme cases of asset conversion do exist and warrant repercussions, it is unlikely that a debtor trading in an \$8,000 vehicle for a new car will be seen as fraudulent behavior by an attorney or debtor. “The only absolute answer is that the attorney must remain an attorney and not become a participant. Granted, this does not answer much of the question. The attorney must conduct a reasonable investigation, establish the facts, and advise the client of all options and risks.” Cristol, et al., [Exemption Planning: How Far May You Go?](#), 48 S.C. L. Rev. 715, 730 (1997).
- 94 Under the Bankruptcy Act of 1898, conversion of non-exempt property into exempt property is *not* fraudulent per se and does not automatically defeat the debtor's claim of exemption. 1A Collier on Bankruptcy P 6.11[5] & n.29 (James Wm. Moore & Lawrence P. King eds., 14th ed. 1976). There are remedies that exist for improper bankruptcy planning, including denial of discharge.
- 11 U.S.C.A. § 727(a)(2) (1994). A debtor would be required to disclose this type of converting of assets on the Statement of Financial Affairs (Official Form 107), ultimately giving creditors, trustee, or the judge opportunity to object. (See line 18 of the official form: https://www.uscourts.gov/sites/default/files/form_b_107.pdf)
- 95 Congress has arguably made this issue worse by delegating exemptions to states to decide. Attorneys are forced to engage in practical/ethical dilemmas through encouraging these types of preplanning behaviors. Brown, [Political and Ethical Considerations of Exemption Limitations: The “Opt-Out” as Child of the First and Parent of the Second](#), 71 Am. Bankr. L.J. 149, 193 (1997). Defining “fresh start” policy is difficult because the term itself remains undefined. Rather, a debtor's fresh start has been described by Hallinan as “a synonym for the existing set of debtor-protection devices” and the “fresh start policy” defined as a “shorthand label for a host of ill-defined, usually unstated, and perhaps unconscious assumptions about the purposes and effect of employing those devices to alter the relations between debtor and creditor.” Hallinan, *supra* note 92, at 51. “‘Bad faith’ has long been recognized as a ground upon which a consumer debtor's voluntary resort to Chapter 7 relief might be thwarted.” Anderson, [Highlights of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 — Part I — Consumer Cases](#), 33 S.U. L. Rev. 1, 3–4 (2005). In *re Bouchard*, 560 B.R. 385 (Bankr. D. R.I. 2016) (explaining that, in chapter 13 case, both petition and plan must be filed in good faith and dismissing case under section 1307(c)). Bankruptcy courts may dismiss bankruptcies where the bankruptcy process is being abused and the petition has been filed in bad faith. See, e.g., In *re Alt*, 305 F.3d 413, 418, 40 Bankr. Ct. Dec. (CRR) 75, 2002-2 U.S. Tax Cas. (CCH) ¶ 50730, 90 A.F.T.R.2d 2002-6540, 2002 Fed. App. 0343P (6th Cir. 2002) (bankruptcy court may dismiss Chapter 13 bankruptcy filed in bad faith); In *re Buis*, 337 B.R. 243, 250, 55 Collier Bankr. Cas. 2d (MB) 955 (Bankr. N.D. Fla. 2006) (same); In *re Piazza*, 719 F.3d 1253, 58 Bankr. Ct. Dec. (CRR) 37 (11th Cir. 2013) (“[T]he power to dismiss ‘for cause’ in § 707(a) includes the power to involuntarily dismiss a Chapter 7 case based on prepetition bad faith.”).
- 96 In *re Zouhar*, 10 B.R. 154, 157 (Bankr. D. N.M. 1981).
- 97 In *re Zouhar*, 10 B.R. at 156.

- 98 See [In re Walkington](#), 42 B.R. 67, 72, 11 Collier Bankr. Cas. 2d (MB) 276, Bankr. L. Rep. (CCH) ¶ 69987 (Bankr. W.D. Mich. 1984).
- 99 This is true regardless of NMVE/MVE states. However, for the purpose of this article, considerations are limited to NMVE states: Alabama (\$8,225.00), [Ala. Code § 6-10-6](#); Indiana (\$12,100.00), [Ind. Code § 34-55-10-2](#); Maryland (\$6,000.00 + \$1,000 in specific household goods/furnishings), Md. Code, Cts. & Jud. Proc. § 11-504; Mississippi (\$10,000.00, under 70 years old); South Dakota (\$5,000.00), [S.D. Codified Laws § 43-45-4](#); Tennessee (\$10,000.000), [Tennessee Code § 26-2-103](#).
- 100 See [North Dakota Cent. Code § 28-22-03.1](#) North Dakota provides a \$7,500 wildcard and offers an additional \$25,000 wildcard to debtors who do not claim a homestead exemption.
- 101 2023 Pacer data from South Dakota bankruptcy filings showed chapter 13 debtors with home equity generally had greater loans taken out on vehicles than chapter 7 debtors with no home equity.
- 102 Typically, it is worded similar to: “debtor's interest not to exceed” a specified value in “any other property” and broadly interpreted in favor of the debtor. [In re Rosol](#), 114 B.R. 560, 115 Lab. Cas. (CCH) ¶ 56299, 1990-1 Trade Cas. (CCH) ¶ 69039 (Bankr. N.D. Ill. 1989).
- 103 Kelly Blue Book “Private Party” value of a “very good” condition 2022 BMW X3 with approximately 100,000 Miles. <https://www.kbb.com/bmw/x3/2022/sdrive30i-sport-utility-4d/?vehicleid=458298&mileage=100000&modalview=false&intent=trade-in-sell&pricetype=trade-in&condition=verygood&options=10520578%7cttrue&extcolor=gray>
- 104 In a chapter 13 filing, the debtor proposes a repayment for a multi-year period based on income, monthly expenses, property owned, and debts owed. Debtors must include the value of any non-exempt property (i.e., property not protected by state exemption laws) in such a re-payment plan and are notoriously less successful than the more cut and dry version, Chapter 7.
- 105 Foohey, et al., Portraits of Bankruptcy Filers, 6 Ga. L. Rev. 573, 592–93 (2022). H.R. REP. NO. 109-31, pt. 1, at 2 (2005) (“The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism ...”); Lawless, et al., [Did Bankruptcy Reform Fail?](#), 82 Am. Bankr. L.J. 349, 352–53 (explaining the origins of the means test).
- 106 In a chapter 13 case, the “means test” standards govern the expenditures that an “above-median” debtor may deduct in calculating disposable income. [11 U.S.C.A. § 1325\(b\)\(3\)](#); “If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense. In both of these cases, the taxpayer is allowed the amount actually spent, or the standard, whichever is less.” U.S. Trustee Program, Census Bureau, IRS Data and Administrative Expenses Multipliers, <https://www.justice.gov/ust/means-testing/20220515> (cases filed between May 15, 2022, and October 31, 2022).
- 107 See [11 U.S.C.A. § 1328\(a\) to \(b\)](#) (directing the court to enter a discharge after completion of a plan but also providing that the judge may enter a discharge if “the failure to complete such payments under the plan is due to circumstances for which the debtor should not justly be held accountable”). Only one-third of chapter 13 cases end with a discharge. “In the 2007 CBP, 36.5% of chapter 13 cases resulted in a discharge following plan completion.” See Greene, Patel, & Porter, [Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes](#), 101 Minn. L. Rev. 1031, 1042–43 (2017) at 1042–43 (noting that the CBP's one-third statistic has endured for decades); see also Porter, [The Pretend Solution: An Empirical Study of Bankruptcy Outcomes](#), 90 Tex. L. Rev. 103, 107–08 (2011) (overviewing studies confirming the one-third statistic). Foohey, et. al., 6 Ga. L. Rev. at 594.
- 108 American law has a history of anxiety towards pauperism, a weariness of public support dependency, and a continuous desire to “police the poor” to lessen the public burden. Flemming, [The Public Interest in the Private Law of the Poor](#), 14 Harv. L & Pol'y Rev. 159, 170 (2019).
- 109 Mississippi Code 85-3-1.

- 110 Alabama, Arizona, Alaska, California, Indiana, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, New York, New Mexico, Ohio, South Carolina, Utah, periodically adjust their statutory exemption limits for inflation. A useful map with periods of adjustment is available. Legal Consumer, (Updated: January 17, 2023) https://www.legalconsumer.com/bankruptcy/topic_50_state.php?TopicID=822.
- 111 11 U.S.C.A. 104(b).
- 112 Laws, 2008, ch. 557, § 1, effective from and after July 1, 2008.
- 113 SL 2013, ch 224, § 2.
- 114 § 522(b)(1) allows individual debtors to claim property as exempt from the bankruptcy estate. Since individuals are distinct from partnerships and corporations, the enterprises cannot claim exemptions under state law. Sole proprietors, however, may claim exemptions. In small business cases, business vs. personal assets can become problematic to determine exemption without a tool of the trade exemption statute. 4 Collier on Bankruptcy P 522.04 (16th 2024).
- 115 Mississippi also does not provide a tool of the trade exemption. Applicable exemptions are as follows: Alabama (unlimited value), [Ala. Code § 6-10-126](#); Maryland (\$5,000.00), MD. Code, [Cts. & Jud. Proc. § 11-504](#); Mississippi (none); Tennessee (\$1,900.00), [Tennessee Code § 26-2-111](#).
- 116 (a) No waiver of exemption in any written instrument shall be held to apply to or include or authorize the levy of an execution or attachment on any of the following property for any debt contracted: (1) Cooking utensils, cooking stoves, table, tableware, chairs, bed and bed clothing in actual use by the family; (2) Wearing apparel; (3) A vehicle used by and essential to the debtor's business; (4) Tools used personally by and essential to the debtor's business; (5) The library of the debtor. (b) Any levy upon such property is absolutely void. (c) This section shall not apply to such property set out in subdivisions (3) and (4) of subsection (a) pledged in a consensual security agreement. Md. Code, [Cts. & Jud. Proc. § 11-504](#).
- 117 Md. Code, [Cts. & Jud. Proc. § 11-504](#).
- 118 See [In re Quidley](#), 39 B.R. 362 (Bankr. E.D. Va. 1984) (determining that a debtor could avoid certain liens on a toolbox, roll cabinets and side cabinets as tools of the trade, but supply cabinets, shelving wheelbarrow, shovel, and brooms would be denied); [In re Page](#), 131 B.R. 530 (Bankr. D. R.I. 1991) (determining that a debtor was entitled to claim a piano as exempt as a tool of the debtor's trade); [In re Frierson](#), 15 B.R. 157 (Bankr. D. Kan. 1981) (permitting a debtor to exempt two trucks, a vehicle, bobcat, asphalt roller, air compressor, concrete saw as business tools, but not the debtor's bank account with working capital). § 56:18. Tools of the trade (Code § 522(d)(6)), 3 Norton Bankr. L. & Prac. 3d § 56:18.
- 119 Green, [Unfair, Abusive, and Unlawful: Protecting Debtors and Society from Unrestrained Bank Account Garnishment](#), 91 Fordham L. Rev. 645, 651 (2022). However, Congress has rejected the act in relation to bank accounts, which complicates matters regarding bank levies. Green, 91 Fordham L. Rev. at 674–75. “Every year, about eleven million workers have their paychecks garnished in this way.” Green, 91 Fordham L. Rev. at 645, 652.
- 120 Garnishment has deep historical roots dating back to the Middle Ages. See Mussman & Riesenfeld, Garnishment and Bankruptcy, 27 Minn. L. Rev. 1, 7–17 (1942).
- 121 Levitin, CONSUMER FINANCE: Markets and Regulation 6 (Barkow, et al., eds., 2018).
- 122 Levitin, supra note 121, at 654 (citing [Kokoszka v. Belford](#), 417 U.S. 642, 650, 94 S. Ct. 2431, 41 L. Ed. 2d 374, 74-2 U.S. Tax Cas. (CCH) ¶ 9570, 34 A.F.T.R.2d 74-5196 (1974) (Congress concern was ... the prevention of bankruptcy in the first place by eliminating an essential element in the predatory extension of credit ... (quoting H.R. REP. NO. 90-1040, at 20 (1967))). Garnishment is regulated at the federal and state level. Levitin, supra note 121, at 653.
- 123 Levitin, supra note 121, at 653; see [Brown v. Com.](#), 40 S.W.3d 873, 876 (Ky. Ct. App. 1999) ([The CCPA] requires state garnishment exemption statutes to comply with federal limitations on amounts

that may be garnished. That being said, many states do not protect debtors in excess of the federal floor requirements. Carolyn Carter, National Consumer L. Ctr., No Fresh Start In 2019: How States Still Allow Debt Collectors to Push Families Into Poverty, at page 13 (2019), https://www.nclc.org/images/pdf/debt_collection/report-still-no-fresh-start-nov2019.pdf [<https://perma.cc/9YR2-BBNQ>].

- 124 [City of Chicago, Illinois v. Fulton](#), 592 U.S. 154, 141 S. Ct. 585, 592, 208 L. Ed. 2d 384, 69 Bankr. Ct. Dec. (CRR) 160, Bankr. L. Rep. (CCH) ¶ 83578 (2021) (Sotomayor, J., concurring).
- 125 The differences in the effects of seizure of a vehicle for satisfaction of debts whether in bankruptcy or outside bankruptcy are similar.
- 126 Debtors may be subject to deficiencies owed to secured creditors if the sale of the property (i.e., motor vehicle) does not cover costs of sale, and the debt owed. The secured creditor establishes a deficiency by proving the price received at the sale and that the sale was commercially reasonable. [UCC §§ 9-615](#), 616.
- 127 A debtor who fails to complete plan payments will not receive a discharge unless special circumstances apply. [11 U.S.C.A. § 1328\(a\)](#).
- 128 Chapter 13 was adapted from the 1898 “Wage Earner Plans” and requires a debtor to make regular payments to the Trustee for a 3–5 year term. This adapted provision attempted to encourage debtors to repay their debts, maximize creditor recovery and avoid the stigma of being an “adjudicated as bankrupt.” The new chapter 13 sought to entice debtors into the plan by avoiding the stigma of chapter 7 and provide temporary relief from creditors. The rationale was designed as a more morally favorable solution for all parties. [Perry v. Commerce Loan Co.](#), 383 U.S. 392, 395–855, 86 S. Ct. 852, 15 L. Ed. 2d 827 (1966). Bankruptcy Act, Act of July 1, 1898, ch. 541, 30 Stat. 544, repealed by Bankruptcy Reform Act of 1978, [Pub. L. No. 95-598](#), 92 Stat. 2549 §§ 601, 686.

96 H.R.Doc. No. 137, Pt. I, 93d Cong., 1st Sess. 157 (1973).
- 129 The U.S. Wage Garnishment Landscape, Though the Lens of the Employer, ADP Research Institute (2017), https://www.adp.com/tools-and-resources/adp-research-institute/research-and-trends/-/media/RI/pdf/WageGarnishment_WhitePaper.ashx. North Carolina, Pennsylvania, South Carolina, and Texas have banned private creditor garnishments. Defusco et al., Wage Garnishment in the United States: New Facts from Administrative Payroll Records, NBER Working Paper Series (December 2022, revised February 2023).
- 130 Garnishees are individuals undergoing garnishment of wages.
- 131 Willborn, [Wage Garnishment: Efficiency, Fairness, and the Uniform Act](#), 49 Seton Hall L. Rev. 847, 850 (2019).
- 132 “[T]hose who are adversely affected by garnishments are people who by definition have not paid their debts.” Willborn, 49 Seton Hall L. Rev. at 850.
- 133 Willborn, 49 Seton Hall L. Rev. at 853.
- 134 Currently, the CCPA restrictions state that a garnishment “may not exceed: 1) 25 per centum of his disposable earnings for that week, or 2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time of the earnings are payable, whichever is less.” [15 U.S.C.A. 1671](#) § 303. In addition, § 304(a) states that “No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.” [15 U.S.C.A. 1671](#) § 304.
- 135 Garnishments are required to be listed on the debtor's Statement of Financial Affairs.
- 136 Willborn, 49 Seton Hall L. Rev. at 855, n.43.
- 137 [Kokoszka v. Belford](#), 417 U.S. at 650.

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Brown & Jansen, The Intended and Unintended Consequences of Consumer Protection Laws: An Analysis of Wage Garnishment and Usury Limits in Auto Lending (May 16, 2023). Western Finance Association Annual Meeting Paper, 2019, Available at SSRN: <https://ssrn.com/abstract=3224471> or <http://dx.doi.org/10.2139/ssrn.3224471>. Miller, Who Files for Bankruptcy? The Heterogeneous Impact of State Laws on a Household's Bankruptcy Decision, 21 Am. L. & Econ. Rev. 247 (2019).

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