

Date of Hearing: August 12, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 898 (Wieckowski) – As Amended July 27, 2020

SENATE VOTE: 35-2

SUBJECT: ENFORCEMENT OF JUDGMENTS: EXEMPTIONS

KEY ISSUE: SHOULD A SCHOLARSHARE COLLEGE SAVINGS ACCOUNT ESTABLISHED BY A JUDGMENT DEBTOR BE EXEMPT, SUBJECT TO SPECIFIED LIMITS, FROM ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE ACCOUNT HOLDER?

SYNOPSIS

This bill exempts for monies held in a ScholarShare college savings account owned and established by a judgment debtor exempt from attachment in a bankruptcy proceeding, subject to specified limits. It also updates the dollar amounts of debtor-owned property that are exempt from enforcement of a money judgment as set forth in existing law so that the statutes reflect the current dollar amounts of the exemptions as adjusted by the Judicial Council in 2019. 529 plans, named after the tax provision in federal law that created them, are qualified tuition programs that allow families to put money aside for a child's educational expenses. The plans are administered by the 50 states and District of Columbia. The ScholarShare 529 Plan is California's official state-sponsored, tax-advantaged 529 college savings plan.

Federal law allows debtors to elect to claim either federal or state exemptions from the bankruptcy estate (thereby shielding the funds from attachment). Federal law excludes from property of the bankruptcy estate all contributions deposited toward a 529 savings account if (1) the beneficiary of the account is the child, grandchild, stepchild, or step-grandchild of the debtor, (2) the deposits are made at least two years before bankruptcy was filed, and (3) the deposits do not exceed the maximum amount permitted per beneficiary for the program. If the contributions are made between one and two years prior to bankruptcy filing 529 assets are protected up to \$5,000 per beneficiary. Existing state law does not similarly shield funds in 529 plans from attachment. Therefore, deposits in a ScholarShare 529 Plan have only federal protection from attachment. This bill would provide state protection, subject to specific limitations, to funds deposited in a ScholarShare 529 Plan.

The bill's original language did not place any limitation on the amount of money deposited into the account, or the timing of the deposit in relation to the bankruptcy filing. As a result of the July 27th amendments, the bill now limits the amount of deposits made in the two years prior to the date when the bankruptcy proceeding is filed that are exempt from attachment to \$15,000 per year per beneficiary. Thus, like federal law, the bill attempts to limit the ability of debtors to shield their assets from creditors by imposing limits on the amount in a college savings account that is deposited into the account in the two years prior to the date when the debtor files for bankruptcy. Sponsored by State Treasurer Fiona Ma, who is Chair of the ScholarShare Investment Board, the bill is supported by numerous consumer groups. The bill has no opposition on file.

SUMMARY: Modestly increases and expands the existing exemptions for property owned by judgment debtors. Specifically, **this bill**:

- 1) Updates the dollar amounts of debtor-owned property that are exempt from enforcement of a money judgment as set forth in existing law so that the statutes reflect the current dollar amounts of the exemptions as adjusted by the Judicial Council in 2019.
- 2) Adds to the existing exemptions a new exemption for monies held in a ScholarShare college savings account owned and established by the debtor, subject to the following limits:
 - a) The amount exempted for contributions to an account during the 365-day period prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.
 - b) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution.
- 3) Defines, for purposes of the limits specified in 2), "account" to include all accounts having the same beneficiary.

EXISTING LAW:

- 1) Provides that, except where property is expressly exempted from collection by law, all property of the judgment debtor is subject to enforcement of a money judgment. (Code of Civil Procedure (CCP) Section 695.010 (a). All further statutory references are to this code, unless otherwise indicated.)
- 2) Allows for certain exemptions, including a homestead exemption, from assets that are subject to a money judgement in a bankruptcy proceeding pursuant to Title 11 of the United States Code (a form of bankruptcy that involves a reorganization of a debtor's business affairs, debts, and assets). (Section 703.140 (a).)
- 3) Allows, in cases other than such bankruptcy proceeding pursuant to Title 11 of the United States Code, a judgment debtor to exempt from collection the categories of specified amounts of specified types of property. Specifically allows for an exemption for, among other things, the following:
 - a) The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence. (Section 703.140 (b)(1).)
 - b) The debtor's interest, not to exceed four thousand eight hundred dollars (\$4,800) in value, in one or more motor vehicles. (*Id.* at (b)(2).)

- c) The debtor's interest, not to exceed six hundred dollars (\$600) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. (*Id.* at (b)(3).)
 - d) The debtor's aggregate interest, not to exceed one thousand four hundred twenty-five dollars (\$1,425) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. (*Id.* at (b)(4).)
 - e) The debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property. (*Id.* at (b)(5).)
 - f) The debtor's aggregate interest, not to exceed seven thousand one hundred seventy-five dollars (\$7,175) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor. (*Id.* at (b)(6).)
 - g) A payment, not to exceed twenty-four thousand sixty dollars (\$24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent. (*Id.* at (b)(11)(D).)
- 4) Allows a judgment debtor to exempt up to two thousand three hundred dollars (\$2,300) related to the equity, sale, or insurance proceeds from the loss, damage, or destruction of a motor vehicle. (Section 704.010.)
 - 5) Allows a judgment debtor to exempt up to two thousand four hundred and twenty-five dollars (\$2,425) of materials that are about to be applied to the repair or improvement of a judgment debtor's principal place of residence. (Section 704.030.)
 - 6) Exempts up to six thousand seventy-five dollars (\$6,075) of the judgement debtor's jewelry, heirlooms, and works of art. (Section 704.040.)
 - 7) Exempts tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that they are reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor or their spouse to earn a livelihood the aggregate equity therein does not exceed six thousand seventy-five dollars (\$6,075) for the judgment debtor or spouse. (Section 704.060.)
 - 8) Exempts a deposit account (a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent) of a judgement debtor of up to specified amounts, depending on the number of depositors who are designated payees of the accounts and what types of benefits are deposited therein. (Section 704.080.)
 - 9) Exempts up to nine thousand seven hundred dollars (\$9,700) in the aggregate loan value of unmatured life insurance policies and all benefits from matured life insurance policies that are "reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." (Section 704.100.)

- 10) Provides that the Judicial Council shall adjust the amount of property exemptions at three-year intervals and determine the amounts of the adjustments “based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).” (Section 703.150 (a), (b), (d).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill makes two changes to existing law relating to property and assets of a judgment creditor. First, it protects from attachment ScholarShare 529 Plans, savings accounts for education expenses, owned by a judgment debtor. Second, it adjusts the amount of assets of judgment creditors that are protected from attachment in conformity with recommendations by the Judicial Council. According to the author:

Unlike retirement plans, ScholarShare 529 college savings accounts are not afforded protection from creditor claims in California. If an account owner is faced with a judgement, the creditor has the ability to attach the account to satisfy their judgment, a result that can be devastating to the family and their loved ones. Presently, California is one of 22 states without state creditor protection for 529 college savings accounts.

SB 898 amends the California Code of Civil Procedures to expand the list of judgment exemptions under California bankruptcy law in order to include family savings in a ScholarShare 529 college savings plan account. Thus this bill will ensure that family college savings are protected from judgment creditors.

What are 529 Plans? 529 Plans, named after the tax provision in federal law that created them, are qualified tuition programs that allow families to put money aside for a child’s educational expenses. Originally limited to post-secondary education costs, they were expanded to cover K-12 education in 2017 and apprenticeship programs in 2019.

The two major types of 529 plans are savings plans and prepaid tuition plans. Savings plans grow tax-deferred, and withdrawals are tax-free if they’re used for qualified education expenses. Prepaid tuition plans allow the account owner to pay in advance for tuition at designated colleges and universities, locking in the cost at today’s rates. 529 plans are also referred to as qualified tuition programs, or Section 529 plans.

The 529 plans are administered by the 50 states and District of Columbia. The plans vary in a number of ways including: contribution limits defined by the state administrator, fees to open and/or maintain an account, investment options offered, the financial services company that manages the plan and whether a state tax deduction or credit is available to residents participating in the plan. ScholarShare 529 is California’s state-sponsored, tax-advantaged 529 college savings plan. Although California residents can utilize other states’ 529 savings plans (and residents of other states can open ScholarShare 529 plans), this bill only addresses and protects funds in ScholarShare 529 plans from attachment. Therefore, if a California resident owned a 529 plan in another state, those funds could very well be subject to attachment in the event that the account holder declared bankruptcy.

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and its Protections for Assets in 529 Plans. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

(BAPCPA) revised the United States Bankruptcy Code as it applies to bankruptcy cases filed on or after October 17, 2005. The BAPCPA essentially make it more difficult for debtors, especially those with high incomes, to file for Chapter 7 bankruptcy (in which most debts are discharged in full). (Kagan, J. “Bankruptcy Abuse Prevention Act (BAPCPA) Investopedia (October 6, 2019), available at <https://www.investopedia.com/terms/b/bapcpa.asp>) The BAPCPA created a means test to qualify for Chapter 7 bankruptcy as opposed to Chapter 13 bankruptcy, which requires at least partial repayment of debts. (*Ibid.*) Furthermore, the BAPCPA increased to eight years, the waiting period from when an individual last filed Chapter 7 bankruptcy to when they may file again. (*Ibid.*)

While the BAPCPA exempts some debts from discharge (such as cash advances and purchases of luxury goods on credit cards within 90 days of filing, as well as student loans), it protects 529 plans from attachment by creditors, with significant limitations. It excludes from property of the bankruptcy estate all contributions deposited toward a 529 savings account if (1) the beneficiary of the account is the child, grandchild, stepchild, or step-grandchild of the debtor, (2) the deposits are made at least two years before bankruptcy was filed and (3) the deposits do not exceed the maximum amount permitted per beneficiary for the program. (11 U.S.C. Section 541 (b)(6).) If the contributions are made between one and two years prior to bankruptcy filing, 529 assets are protected *up to \$5,000 per beneficiary* under the BAPCPA. (*Ibid.*)

The BAPCPA allows debtors to elect to claim either federal or state exemptions from the bankruptcy estate. (11 U.S.C. Section 522 (b).) However, 529 plans only have *federal protection* from attachment. This bill would provide *state protection* to the State of California’s official 529 plan: the ScholarShare 529 Plan.

Who owns Scholarshare 529 Plans? Because only persons who have discretionary income have the ability to save for college and one of the main benefits of a Scholarshare 529 Plan is tax deductibility, 529 plans are most likely to be opened and owned by relatively well-off Californians. That assumption is borne out by data from the State Treasurer’s Office (below) that shows that almost 44 percent of plan owners have an annual income of more than \$150,000 per year, even though only about 13 percent of California residents earn that amount of income. Furthermore, consistent with other indicators of household wealth, a disproportionately small number of Scholarshare 529 Plan owners are people of color. For example, according to data from the State Treasurer’s Office, Black families represent only 1.2 percent of Scholarshare 529 Plan owners (exactly one half the percentage of the state’s population that they represent (2.4 percent). Latino families make up 26.6 percent of that state population, but own less than nine percent of Scholarshare 529 Plans.

ACCOUNT OWNERS		
The ScholarShare 529 account owner base is as varied as the California population		
	CA POPULATION	ACCOUNT OWNERS
Household Size		
1	48.9%	26.6%
2	31.8%	22.5%
3	16.7%	29.7%
4+	13.1%	21.2%
Race and Ethnicity		
African American	2.4%	1.2%
Hispanic	26.6%	8.8%
East Asian	8.8%	11.6%
Eastern European	2.3%	2.2%
Western European	46.5%	39%
Other	13.4%	37.2%
Household Income		
\$1-\$50K	38.4%	8.6%
\$50K-\$100	31.8%	22.1%
\$100K-\$150K	16.7%	25.8%
\$150K+	13.1%	43.6%

Recent Amendments to the Bill Curb Possible Abuse of the Scholarshare 529 Plan Exemption.

As explained above, existing federal law protects 529 plans from attachment by creditors, and also has significant limitations on the 529 plan exemption. The BAPCPA excludes from property of the bankruptcy estate all contributions deposited toward a 529 savings account if (1) the beneficiary of the account is the child, grandchild, stepchild, or step-grandchild of the debtor, (2) the deposits are made at least two years before bankruptcy was filed, and (3) the deposits do not exceed the maximum amount permitted per beneficiary for the program. (11 U.S.C. Section 541 (b)(6).) If the contributions are made between one and two years prior to bankruptcy filing 529 assets are protected *up to \$5,000 per beneficiary (Ibid.)*, an admittedly small amount considering the cost of higher education.

As introduced, the bill would have protected the following assets from attachment:

Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code).

This original language did not place any limitation on the relationship between the account owner and the beneficiary, the amount of money deposited into the account, or the timing of the deposit in relation to the bankruptcy filing.

As a result of the July 27th amendments, the bill now includes the following limitation on its exemption for Scholarshare 529 plans. For deposits made in the two years prior to the date when the bankruptcy proceeding is filed, up to “the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the contribution” (currently set at \$15,000) is exempt per year and per beneficiary. Thus, like federal law, the bill attempts to limit the ability of debtors to shield their assets from creditors by imposing limits on the amount in a college savings account that is deposited into the account in the two years prior to the date when the debtor files for bankruptcy.

As a result of the amendments, the California Bankers Association, which previously expressed concerns about the bill, now has a neutral position. It writes the following:

By placing a reasonable threshold on the amount of funds that may be protected under this measure, amendments adopted on July [27, 2020] address concerns that, without guardrails, SB 898 may create an unlimited loophole for wealthy debtors to hide assets prior to filing for bankruptcy. Amendments narrow the protection of funds deposited in ScholarShare 529 accounts to an amount equal to the federal gift tax limit exclusion under Section 2503(b) of the Internal Revenue Code of 1986. The annual gift tax exclusion is set at \$15,000 for the year 2020. This limitation applies to funds deposited within one year prior to filing for bankruptcy as well as to deposits made between one year and two years prior to filing.

Incentivizing individuals to save toward higher education costs is an important and noble goal. We applaud efforts to protect monies designated for college savings with an approach that recognizes the need for reasonable parameters. We appreciate the willingness of both you and the sponsor of SB 898 to address our concerns and assert a Neutral as Amended position based on the July [27th] amendments.

Adjustments to the Amount of Debtor Funds That are Exempt from Attachment. Allowing individuals who are faced with a bankruptcy or other judgment to maintain a minimum amount of property is essential to ensuring that judgment debtors are not destitute after bankruptcy proceedings are concluded. Bankruptcy and the enforcement of other judgments should not be a life sentence; individuals should be able to start over and rebuild. For example, the homestead exemption provides that a specified portion of equity in a homestead is exempt from execution to satisfy a judgment debt and precludes the amount of the homestead, depending on certain characteristics of the homestead’s residents, so as to provide some protection against debtors being left homeless. (CCP Section 704.730.)

Existing law establishes the maximum amount of certain assets that are protected from attachment in a bankruptcy proceeding. The Judicial Council periodically adjusts these amounts to reflect changes in the California Consumer Price Index are crucial to maintaining this balance, and keep the actual value of the exemptions consistent in the face of inflation and other economic pressures. (See CCP Section 703.150 (a), (b), (d).)

The Judicial Council most recently adjusted the amount of these exemptions in April 2019. While the 2019 adjustments are set forth in the applicable Judicial Council form (Form EJ-156), the statutes themselves still reflect outdated amounts—and in some cases, reflect amounts put in

place in the early 2000s. This bill would eliminate those inconsistencies by revising the relevant statutes to match the Judicial Council's most recent adjustments to the exemption amounts.

ARGUMENTS IN SUPPORT: State Treasurer Fiona Ma, who is Chair of the ScholarShare Investment Board, which oversees the state's ScholarShare 529 college savings plan and also the sponsor of this bill, writes the following in support of the bill:

Unlike retirement plans, however, ScholarShare 529 college savings accounts are not given protection from creditor claims in California. In the unfortunate event that an account owner is served with a judgement, the creditor has the ability to attach the account to satisfy their judgment, a result that can be devastating to family members and their loved ones. Presently, California is one of only 22 states without state creditor protection for 529 college savings accounts.

With the costs of attending college continually rising and the alarming amount of student loan debt that young graduates are encumbering today, it is critical that we do everything.

Prior Similar Legislation: SB 616 (Wieckowski, Ch. 552, Stats. 2019) extended and clarified a deposit account holder's timeline for filing a claim of exemption when a judgment creditor seeks to extract money from the account through a levy, and established an automatic 704 exemption for bank accounts from bank account levies, of the amount equal to or less than the minimum basic standard of adequate care for a family of four for Region 1, established by Section 11452 of the Welfare and Institutions Code and as annually adjusted by the State Department of Social Services pursuant to Section 11453 of the Welfare and Institutions Code.

SB 308 (Wieckowski, 2015-2016) would have updated the dollar values of certain 703 and 704 exemptions to match the Judicial Council's adjustments in 2016; additionally, it would have modified the homestead exemption, created an unlimited exemption for specified agricultural property, and provided that the bankruptcy status of a debtor would not constitute a default on a contract for a motor vehicle. The bill passed the Senate and was amended in the Assembly to remove the motor vehicle contract provisions, but failed passage on the Assembly floor.

AB 1853 (Wieckowski, 2013-2014) was introduced after AB 198 died and contained many of the same increased dollar values and additional categories of exemptions; however, it omitted some of AB 198's more drastic amendments (e.g., AB 198's substantial expansion of the exemption for life insurance policies and annuities). The bill was held on suspense in the Assembly Appropriations Committee.

AB 198 (Wieckowski, 2013-2014) would have increased certain of the dollar values of the exemptions addressed in SB 898 (as well as increasing the homestead exemption) and created additional categories of both 703 and 704 exemptions. ScholarShare funds were not addressed. The bill was held on suspense in the Assembly Appropriations Committee.

AB 929 (Wieckowski, Ch. 678, Stats. 2012) increased the dollar values of certain 703 and 704 exemptions and increased the homestead exemption for persons 55 or older.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Treasurer Fiona Ma (sponsor)

California Low-income Consumer Coalition

Consumer Action

Housing and Economic Rights Advocates

Opposition

None on file

Analysis Prepared by: Alison Merrilees / JUD. / (916) 319-2334