

SENATE THIRD READING
SB 898 (Wieckowski)
As Amended July 27, 2020
Majority vote

SUMMARY:

Modestly increases and expands the existing exemptions for property owned by judgment debtors.

Major Provisions

- 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.

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.

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.

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% 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% of Scholarshare 529 Plan owners (exactly one half the percentage of the state's population that they represent (2.4%). Latino families make up 26.6% of that state population, but own less than nine percent of Scholarshare 529 Plans.

Recent Amendments to the Bill Curb Possible Abuse of the Scholarshare 529 Plan Exemption. Existing federal law protects 529 plans from attachment by creditors, and also has significant limitations on the 529 plan exemption. 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 (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.

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. (Code of Civil Procedure (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.

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.

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.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

None

VOTES:**SENATE FLOOR: 35-2-3**

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Moorlach, Morrell

ABS, ABST OR NV: Hurtado, Jones, Melendez

ASM JUDICIARY: 11-0-0

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Limón, Obernolte, Reyes

UPDATED:

VERSION: July 27, 2020

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0003177