
UNFINISHED BUSINESS

Bill No: SB 898
Author: Wieckowski (D)
Amended: 7/27/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 5/22/20

AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski

NO VOTE RECORDED: Borgeas, Jones

SENATE FLOOR: 35-2, 6/11/20

AYES: 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

NOES: Moorlach, Morrell

NO VOTE RECORDED: Hurtado, Jones, Melendez

ASSEMBLY FLOOR: 74-0, 8/25/20 - See last page for vote

SUBJECT: Enforcement of judgments: exemptions

SOURCE: State Treasurer Fiona Ma

DIGEST: This bill revises the statutes setting forth the amounts of various types of property owned by a judgment debtor that are statutorily exempt from enforcement of a money judgment so that the amounts match the currently-in-effect amounts implemented by the Judicial Council in 2019. This bill also adds an exemption from enforcement of a judgment for money held in a college savings account owned by the debtor that was established pursuant to the Golden State ScholarShare Trust Act (Ed. Code, § 69980 et seq., referred to as a “ScholarShare account” or “ScholarShare 529 account”).

Assembly Amendments (1) cap the funds in a ScholarShare account that may be exempted from collection, for amounts contributed within the two years preceding

the debtor's petition for bankruptcy, to limit a debtor's ability to shield assets from creditors through ScholarShare deposits; and (2) define "account" to include all accounts having the same beneficiary, to ensure the exemption cap is not evaded through the establishment of multiple accounts.

ANALYSIS:

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 Civ. Proc., § 695.010(a).)
- 2) Provides that, in a case under Title 11 of the United States Code (relating to bankruptcy), a judgment debtor may elect to exempt from collection the categories of property set forth in Code of Civil Procedure section 703.140, subdivision (b), or the categories set forth in the remainder of the chapter (including the exemptions in Code of Civil Procedure sections 704.010 et seq.). (Code Civ. Proc., § 703.140(a).)
- 3) Provides that, in cases not arising under Title 11 of the United States Code, a judgment debtor may exempt from collection the categories of property set forth in Code of Civil Procedure sections 704.010 et seq. (Code Civ. Proc., § 703.010(a).)
- 4) Provides that the Judicial Council shall adjust the 703 and 704 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)." (Code Civ. Proc., § 703.150(a), (b), (d).)
 - a) Despite the Judicial Council's statutory obligation to adjust the dollar values of the 703 and 704 exemptions, the Judicial Council's adjustments are not automatically reflected in the statutes themselves. The current exemption amounts reflecting the Judicial Council's 2019 adjustments are set forth in Judicial Council Form EJ-156, but the statutes have not been revised to reflect the newly adjusted amounts, making the amounts set forth in the statute incorrect. (Compare Judicial Council Forms, form EJ-156 [revised April 1, 2019] with, e.g., Code Civ. Proc., §§ 703.140(b) [last amended in

2016, Ch. 50, Stats. 2016], 704.010 [last amended in 2003, Ch. 379, Stats. 2003, Ch. 379].)

5) Does not exempt funds in a ScholarShare account from collection.

This bill:

- 1) Updates the dollar amounts set forth in the 703 and 704 exemptions so that the statutes reflect the current dollar amounts of the exemptions as adjusted by the Judicial Council in 2019.
- 2) Adds to the 703 and 704 exemptions an exemption for monies held in a ScholarShare account owned and established by the debtor, under the following conditions:
 - 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 “account,” for purposes of the limits specified in 2) above, to include all accounts having the same beneficiary.

Background

Existing law identifies property of a debtor that is exempt from all procedures for enforcement of a money judgment. A judgment debtor whose case arose under Title 11 of the United States Code can elect between two sets of exemptions: those set forth in Code of Civil Procedure section 703.140 (the “703 exemptions”), or alternative exemptions set forth in Code of Civil Procedure sections 704.010 et seq. (the “704 exemptions”). Other judgment debtors are entitled to the 704 exemptions only.

Certain 703 and 704 exemptions have specific dollar values—for example, a debtor may exempt up to \$5,850 of an interest in one or more motor vehicles.¹ The Judicial Council adjusts the dollar values of the 703 and 704 exemptions every three years based on the change in the annual California Consumer Price Index for All Urban Consumers within the last three years. The statutes are not automatically revised to reflect the latest adjustments. This bill modifies the dollar values of various 703 and 704 exemptions as set forth in the statutes to match the currently-in-effect amounts adopted by the Judicial Council on April 1, 2019.

Existing law also does not exempt from collection, in any amount, monies held in ScholarShare accounts. California’s ScholarShare program allows individuals to establish qualified tax-advantaged investment accounts under 26 U.S.C. § 529 (“529 accounts”) in order to help pay the increasingly steep cost of higher education. ScholarShare accounts may be established for any future student, and the investment gains may be withdrawn tax-free when spent on qualifying educational expenses such as tuition, books, and certain room and board expenses.² This bill adds 703 and 704 exemptions for monies held in ScholarShare accounts owned by the debtor. The exemption is absolute for amounts contributed more than two years before a debtor declares bankruptcy. For amounts contributed within two years of a debtor’s declaration of bankruptcy, the exemption has a per-year, per-beneficiary maximum of “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,” which is currently \$15,000.

Comments

According to the author:

One of the greatest hurdles families face when contemplating whether to pursue a post-secondary education is the skyrocketing cost of attending college, which has grown at a rate of two to three times the rate of inflation. Despite these troubling trends, many California families continue to see value in a post-secondary education for their children and make it a priority to help them prepare financially by saving as much as possible in an effort to mitigate against increasing costs and student loan debt.

Savings plans such as ScholarShare 529 provide families of all income levels with a diverse set of investment options, tax-deferred growth, and withdrawals free from state and federal taxes when used for qualified higher education

¹ Judicial Council Forms, form EJ-156 (revised April 1, 2019), available at <https://www.courts.ca.gov/documents/ej156.pdf> (as of June 3, 2020).

² 26 U.S.C. § 529; Ed. Code, §§ 69980 et seq.

expenses, such as tuition and fees, books, certain room and board costs, computer equipment and other required supplies. ScholarShare 529 savings can be used at eligible educational institutions, which include most public and private four-year universities, community colleges, and career technical schools nationwide and many institutions abroad.

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 judgment, 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 Procedure 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.

In support, sponsor, State Treasurer Fiona Ma writes:

Since its inception in 1999, ScholarShare 529 has been committed to helping California families of all income levels prepare and save for future higher education expenses. Studies have shown that children with savings accounts, however small, are three times more likely to enroll and four times more likely to graduate from college.

Unlike retirement plans, however, Scholar Share 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 judgment, 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 protections for 529 college savings accounts. The savings in these accounts are for access to higher education for the child (the beneficiary of the account), not the account owner and this lack of creditor protection disproportionately penalizes the beneficiary. In many cases other family members contribute to these accounts as well, not just the account owner, as gifts to invest in the beneficiary's future. It is unfair and unjust to allow a child's future to be negatively impacted when they have done nothing wrong to directly impact the judgment.

Supporter, Housing and Economic Rights Advocates writes:

The Legislature should support and protect families who save for their children's education. We should reward their far-sighted concern for the welfare, not only of their own children, but of society in general. Education is a key to productivity, financial independence, and service to others. Creditors should not be permitted to appropriate these salutary savings, and irreparably harm the future educational prospects of innocent children, to collect a debt. Allowing them to divert a child's education fund is a cruel joke, especially when the savings has been accumulated over a long period of time.

This is of immediate and pressing concern in view of the unprecedented unemployment we are now facing and the impending flood of collection actions based on consumer debt.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/25/20)

State Treasurer Fiona Ma (source)
California Low-Income Consumer Coalition
Consumer Action
Housing and Economic Rights Advocates
One individual

OPPOSITION: (Verified 8/25/20)

None received

ASSEMBLY FLOOR: 74-0, 8/25/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Bigelow, Frazier, Gray, McCarty, Wicks

Prepared by: Allison Meredith / JUD. / (916) 651-4113
8/25/20 15:58:00

**** **END** ****