

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

SB 898 (Wieckowski)
Version: April 6, 2020
Hearing Date: May 22, 2020
Fiscal: No
Urgency: No
AWM

SUBJECT

Enforcement of judgments: exemptions

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 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”).¹

EXECUTIVE SUMMARY

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. Exemptions are necessary to ensure that judgment debtors are not driven into irreversible financial ruin.

¹ 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 ScholarShare accounts may be established for any future student, and the investment gains may be withdrawn tax-free when spent on qualifying educational expenses such as tuition, books, and certain room and board expenses. (*Id.*, § 529(c), (e); Ed. Code, §§ 69980 et seq.) ScholarShare accounts are an important tool for California’s families to start saving for college early and prepare for the costs of higher education.

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.² 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. This bill also adds 703 and 704 exemptions for monies held in ScholarShare accounts owned by the debtor.

This bill is sponsored by State Treasurer Fiona Ma (sponsor) and supported by the California Low-Income Consumer Coalition, Consumer Action, Housing and Economic Rights Advocates (HERA), and one individual. There is no known opposition.

PROPOSED CHANGES TO THE LAW

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

² Judicial Council Forms, form EJ-156 (revised April 1, 2019), available at <https://www.courts.ca.gov/documents/ej156.pdf> (as of May 14, 2020).

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.

COMMENTS

1. Author's statement

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 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.

2. Updating the amounts of the 703 and 704 exemptions to match the Judicial Council's adjusted figures will help avoid confusion – especially by unsophisticated debtors.

Allowing individuals faced with a bankruptcy or other judgment to exempt certain categories of property from enforcement is essential to ensuring that judgment debtors are not thrown into penury. 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.³

This bill addresses a number of the exemptions set forth in the Code of Civil Procedure less familiar than the homestead exemption. For these exemptions to be effective, they must strike a balance between being substantial enough to give judgment debtors a path forward, while not being so large that judgment creditors are denied justice. The Judicial Council's periodic adjustments to the amounts of the exemptions reflecting changes in the California Consumer Price Index are crucial to maintaining this balance, because they keep the actual value of the exemptions consistent in the face of inflation and other economic pressures.⁴

The Judicial Council most recently adjusted the caps for the 703 and 704 exemptions in April 2019.⁵ 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 2000's.⁶ At best, the inconsistencies

³ Code Civ. Proc., § 704.730.

⁴ See Code Civ. Proc., § 703.150(a), (b), (d).

⁵ See Judicial Council Forms, form EJ-156 (revised April 1, 2019), available at <https://www.courts.ca.gov/documents/ej156.pdf> (as of May 14, 2020).

⁶ See, e.g., Code Civ. Proc., §§ 703.140(b) (reflecting Judicial Council's 2016 adjustments); 704.010 (reflecting exemption amount adopted by statute in 2003), 704.030 (same).

between the statutes and the current exemption amounts could cause confusion; at worst, unsophisticated and/or unrepresented judgment debtors may erroneously believe that the statutory amounts take precedence over the Judicial Council form, leading them to exempt less property than permitted by law. This bill would eliminate those inconsistencies by revising the relevant statutes to match the Judicial Council's most recent adjustments to the 703 and 704 exemption amounts. There is no opposition to the bill, and indeed, it is difficult to imagine an objection to updating the statutes to reflect current law.

3. Adding 703 and 704 exemptions for ScholarShare accounts protects the goals of the ScholarShare program

As explained by the author of the bill, ScholarShare accounts “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 expenses, such as tuition and fees, books, certain room and board costs, computer equipment and other required supplies.” As the cost of higher education continues to escalate, the ScholarShare program incentivizes Californians to start saving early for children, grandchildren, and others.

Federal bankruptcy law and more than half the states exempt monies held in 529 accounts from collection.⁷ California, however, provides no protection for ScholarShare account funds.⁸ This lack of protection is inconsistent with California's protection for other funds dedicated to long-term planning, such as accounts containing Social Security benefits,⁹ monies held in public retirement benefit trusts or accounts,¹⁰ and monies held in private retirement accounts.¹¹ In particular, the logic behind exempting funds in public and private retirement accounts applies with equal force to exempting funds in ScholarShare accounts: the accounts are given favorable tax status to encourage beneficial long-term saving behavior, so subjecting them to collection causes undue harm to the debtor's long-term financial well-being. Indeed, as supporter Consumer

⁷ 11 U.S.C. § 541(b)(6); Alaska Stat. § 14.40.802(h); Ark. Code, § 6-84-110(b); Colo. Rev. Stat. § 23-3.1-307.4; Fla. Stat. § 222.22(1); 735 ILCS 5/12-1001(j); Kan. Stat. § 60-2308(f) (exempting 529 account monies only when account beneficiary is a lineal descendent of the account owner, and with cap on recent donations); Ky. Rev. Stat. § 164A.350(7); La. Rev. Stat. § 17:3096(G); Me. Rev. Stat. § 11478; Md. Ed. Code, § 18-1913; R.R.S. Neb., § 85-1809(1); Nev. Rev. Stat. § 21.090(r)(5) (exemption subject to an overall \$1,000,000 cap on 529 accounts and funds in various retirement, pension, and trust accounts); N.J. Stat. § 18A-71B-41.1; NY CLS CPLR, § 5205(j) (exemption capped at \$10,000 where beneficiary is not a minor); N.D. Admin. Code 12.5-02-01-06(5); Ohio Rev. Code, § 3334.15(A); Okla. Stat. § 1(A)(24); Or. Rev. Stat. § 178.345(2); 24 Pa. Stat. § 6901.309.2(a); R.I. Gen. Laws, § 9-26-4(15); S.C. Code, § 59-2-40; S.D. Codified Laws, § 13-63-20 (exemption not available for funds contributed within one year prior to filing bankruptcy petition under Title 11 of the United States Code); Tenn. Code, § 49-7-822; Tex. Prop. Code, § 42.0021(a)(10), (11); Va. Code, § 23.1-707(G); W. Va. Code, § 18-30-7(i); Wisc. Stat. § 224.48(8).

⁸ *O'Brien v. AMBS Diagnostics, LLC* (2016) 246 Cal.App.4th 942, 950.

⁹ Code Civ. Proc., §§ 703.140(10), 704.080.

¹⁰ Code Civ. Proc., § 704.110.

¹¹ Code Civ. Proc., § 704.115.

Action notes, given that ScholarShare accounts are generally for the benefit of individuals other than the account holder, subjecting ScholarShare accounts to collection often has the perverse result of taking money meant for *someone other than the debtor* – money set aside for the debtor’s child’s, or grandchild’s, college education.

By closing the gap in California law that exempts a wide range of funds from collection but leaves ScholarShare accounts unprotected, this bill will ensure that ScholarShare account funds are protected and reach their intended beneficiaries.

SUPPORT

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

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior 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.