

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 956 (Wieckowski)
Version: February 9, 2022
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Fiscal: No
Urgency: No
TSG

SUBJECT

Enforcement of money judgments: exemptions

DIGEST

This bill simplifies and clarifies implementation of a recent law that exempts contributions made to ScholarShare college savings accounts, up to specified limitations, from being taken away by judgment or bankruptcy creditors.

EXECUTIVE SUMMARY

Even when someone loses a lawsuit or files for bankruptcy, California law shields certain property from being taken from the debtor to satisfy the creditors. These protections, known as exemptions, are based on public policy considerations. In 2020, California enacted SB 898(Wieckowski, Ch. 81, Stats. 2020) which established new exemptions for contributions made to a ScholarShare account. ScholarShare accounts are tax-deferred college savings accounts. SB 898 made any contributions to a ScholarShare account deposited within two years of a bankruptcy filing exempt, up to a cap pegged to the Internal Revenue Service's (IRS) annual limitation on tax-exempt gifts (currently \$10,000).

This bill resolves two issues that arose in the wake of enactment of SB 898. First, SB 898 required courts to determine the maximum exemption for ScholarShare contributions based on the date of the contribution. People typically make many separate contributions to a Scholarshare account, however, which greatly complicates the calculation. This bill would instead specify that the applicable date for determining the maximum exemption for ScholarShare contributions is the date when the relevant money judgment was entered or the date on which the bankruptcy petition was filed. Second, the Judicial Council is required to adjust many of the debtors' exemptions for inflation at regular intervals. Since the upper limit on the ScholarShare account exemption is pegged to the IRS's gift exclusion limit, however, this bill clarifies that the Judicial Council does not have to adjust the limit for inflation.

The bill is author-sponsored. There is no opposition on file.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that, except where property is expressly exempted from collection by law, all property of a judgment debtor is subject to enforcement of a money judgment. (Code Civ. Proc. § 695.010(a).)
- 2) Enables a judgment debtor to 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).)
- 3) Includes, among the exemptions set forth in Code of Civil Procedure sections 704.010 *et seq.*, contributions made to a ScholarShare account in the two years prior to the filing of a bankruptcy, up to a yearly maximum not to exceed the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended (currently \$10,000). (Code Civ. Proc. § 705.105.)
- 4) Allows someone filing for bankruptcy to choose between the exemptions set forth in Code of Civil Procedure section 703.140, subdivision (b), or the exemptions 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).)
- 5) Includes, among the exemptions set forth in Code of Civil Procedure section 703.140, subdivision (b), contributions made to a ScholarShare account in the two years prior to the filing of a bankruptcy, up to a yearly maximum not to exceed the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended (currently \$10,000). (Code Civ. Proc. § 703.140(b)(12).)
- 6) Requires the Judicial Council to adjust the exemptions set forth in Code of Civil Procedure sections 703 *et seq.* and 704 *et seq.* for inflation every three years. (Code Civ. Proc., § 703.150.)

This bill:

- 1) Specifies that, with respect to the exemptions for ScholarShare contributions, the maximum amount that is exempt is determined by the date of the entry of the relevant money judgment or by the date on which the relevant bankruptcy petition is filed, as applicable.
- 2) Clarifies that the Judicial Council does not need to adjust the maximum amount of the exemption for ScholarShare contributions to account for inflation.

COMMENTS

1. Background on debtor exemptions in California

When someone prevails in a lawsuit in California and the court orders the losing party to pay money to the winner, the order is known as a money judgment, the winner is known as the judgment creditor, and the loser is known as the judgment debtor. If the judgment debtor simply pays the required amount, the money judgment is satisfied and the matter is over. Frequently, however, the judgment debtor refuses or is unable to pay. In such a situation, the judgment creditor has a number of legal tools at their disposal to try to collect the money from the judgment debtor. The judgment creditor may seek to place a lien on the judgment debtor's property, levy against the judgment debtor's bank accounts, or garnish the judgment debtor's wages, among other things. At the same time that California law authorizes and facilitates these tactics, it also shields or allows the judgment debtor to protect some parts of the judgment debtor's income and assets from being taken away. These legally protected income and assets are known as exemptions.

Exemptions play a variety of public policy purposes. Their primary purpose is to ensure that while the judgment debtor may be forced to pay off some of all of what is owed, the judgment debtor and anyone who depends on the judgment debtor financially can still cover their basic needs. Exemptions sometimes also serve to ensure that collections efforts are not counterproductive, as they would be if, for example, they took a debtor's work tools away, thereby preventing the debtor from earning the income with which to pay off the debt.

The primary exemptions from collection of a money judgment are found at Code of Civil Procedure 704.010 et seq. These exemptions are sometimes referred to as the "704 exemptions." When a Californian declares bankruptcy, they can avail themselves of these same exemptions or opt instead to use a similar, but different set of exemptions pursuant to Code of Civil Procedure Section 703.140(b). This alternative set of exemption is sometimes known as the "703 exemptions."

2. What is a ScholarShare account?

As described by the author:

ScholarShare 529 serves as California's official state-sponsored 529 college savings plan. Named after Section 529 of the Internal Revenue Code, 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.

Once established for a beneficiary, anyone may make contributions to a ScholarShare account, including the beneficiary, family members, friends, or anyone else who wishes to support the beneficiary's education goals financially.¹

3. Recent legislation created new exemptions for contributions to ScholarShare accounts

With the recent enactment of SB 898 (Wieckowski, Ch. 81, Stats. 2020), California added two new exemptions for contributions made to ScholarShare accounts, one in the 704 exemptions and one in the 703 optional alternative exemptions for bankruptcy cases. The two exemptions are identical. Both provide that money held in a ScholarShare account owned by the judgment is exempt, with the limitation that, for the two years prior to the judgment debtors' bankruptcy filing, the exempt amount each year cannot exceed the Internal Revenue Service's annual gift tax exclusion.

4. Setting a single reference date for determining the applicable exemption limit

As discussed, SB 898 made some of a judgment debtor or a bankruptcy petitioner's contributions to a ScholarShare Account exempt from collection or the bankruptcy estate. At the same time, SB 898 limited the amount of that exemption to the federal government's maximum permissible annual gift tax exclusion. Since the maximum amount of the federal government's annual tax gift exclusion is subject to change, however, SB 898 went on to clarify that courts should apply the cap that was "in effect at the time of the contribution" to the ScholarShare account.

That formula is rather unwieldy, however, because contributions to a ScholarShare Account can be made at any time and by various people. Under the existing formula, therefore, courts would have to examine when each contribution was made and apply the corresponding IRS gift tax exclusion figure. To simplify things, this bill instead directs courts to apply the cap that was in effect at the time of the money judgment, in the case of judgment debtors, and at the time of the filing of the bankruptcy petition in the case of bankruptcy petitioners.

5. Ensuring Judicial Council need not make adjustments where unnecessary

Code of Civil Procedure Section 703.150 instructs the Judicial Council to adjust the dollar amount for a number of different debtors' exemptions for inflation every three years. Under existing law, that duty technically includes adjusting the exemptions now

¹ *Plan Details & Information*, ScholarShare 529 <https://www.scholarshare529.com/plan/details.shtml> (as of Mar. 16, 2022).

available for contributions to ScholarShare accounts, as authorized by SB 898. Because the cap on the exemption for ScholarShare contributions is a fixed number set forth in federal statute, however, it does not make sense for the Judicial Council to adjust the amount for inflation. Accordingly, as part of its clean up to SB 898, this bill also clarifies that the Judicial Council need not make inflationary adjustments to the ScholarShare contribution exemption.

6. Arguments in support of the bill

According to the author:

SB 956 is a clean-up bill to SB 898 (2020) which sought to ensure that family college savings are protected from judgment creditors. SB 898 (2020) amended 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. SB 956 would specify that the exemption amount for money held in a Scholarshare account in a bankruptcy case would be in effect at the time of the filing of the debtor's petition for bankruptcy, and in cases of non-bankruptcy judgments, the effective date would be at the time of entry of the money judgment.

In further support of the bill, State Treasurer and Chair of the ScholarShare Investment Board Fiona Ma writes:

I believe these clarifying amendments are simple and straightforward and will help avert confusion and possible misinterpretation of state law in the future. More importantly, however, these changes will ensure that we continue to safeguard what can be considered a family's most important asset - their children's college savings.

SUPPORT

California State Treasurer, Fiona Ma

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1099 (Wieckowski, 2022) proposes a series of adjustments to judgment and bankruptcy exemptions that, among other things: increase the amount that may be exempted for a vehicle; prevent repossession or acceleration of a vehicle

payment schedule based on bankruptcy alone; and exempt vehicles modified for use with a disability as medical aids. SB 1099 is currently pending consideration before the Senate Judiciary Committee.

Prior Legislation: SB 898 (Wieckowski, Ch. 81, Stats. 2020) expanded the list of debtors' exemptions under California judgment collection and bankruptcy law to include contributions in a ScholarShare 529 college savings plan account.
