

Be Wary of the Proposed New Automatic Exemption

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Illinois SB 1738 was recently passed by the House and Senate and was signed into law by Governor Pritzker on May 5, 2025. It will take effect on January 1, 2026.

What is SB 1738? There are numerous consumer protection amendments that will be beneficial to consumer judgment debtors, such as the increase in the homestead exemption from \$15,000 for an individual and \$30,000 for a couple to \$50,000 and \$100,000, respectively. While this is a significant jump in the homestead exemption amount, there have been no increases in several years and many believe that it is overdue in order to bring Illinois more in line with the rest of the country. SB 1738 also increases other exemptions for personal property for consumer judgment debts and even eliminates the requirement that small claims defendants have to pay an appearance fee in order to defend against such a suit.

Most of the changes in SB 1738 will have a minimal effect on financial institutions. Residential mortgages will still contain waivers of homestead exemptions by the borrowers, so the increase is likely inconsequential. However, there is one provision in SB 1738 that could cause problems for financial institutions that are not prepared for it.

All banks and credit unions know they are the primary “target” for creditors’ rights attorneys. Financial institutions are constantly served with garnishments and citations to discover assets that require the freezing of accounts belonging to the judgment debtor. SB 1738, however, creates a new section that banks and credit unions need to understand and prepare to change how they operate once they are served with collection vehicles. The new section is 735 ILCS 5/12-1001.1, and it creates what it calls an “automatic exemption” for consumer judgment debtors to \$1,000 of the debtor’s equity interest in funds held in a checking or savings account by a third party. Subsection (d) states: “[A] third-party citation respondent shall exclude the amount of the automatic exemption when withholding the payment of moneys sought to be enforced by the judgment creditor” Put another way, third-party citation respondents (financial institutions) cannot freeze \$1,000 of a consumer judgment debtor’s account so that the consumer judgment debtor has free access to up to \$1,000 despite the service of the citation to discover assets.

How is a financial institution to know if a judgment is a consumer judgment or not? Thankfully, SB 1738 also amends the Citation to Discover Assets statute, and it requires the judgment creditor to certify on the citation to discover assets that are served on the financial institute the fact that judgment is a consumer debt judgment. Such a certification is the notice that the financial institution will have that will inform it of the existence of an “automatic exemption.”

SB 1738 takes effect on January 1, 2026. Banks and credit unions have time to put procedures in place to ensure that consumer debtors are given their “automatic exemption” so that funds are not frozen and should not be subjected to the citation to discover assets freeze. Time should not be wasted, however, so that processors of citations to discover assets are well-advised and familiar with this change in the law. Failure to give the “automatic exemption” could result in liability for a bank or credit union, so care must be taken to ensure that this “automatic exemption” is just that – automatic.