

SENATE BILL No. 403

AN ACT concerning the postsecondary education savings program; amending K.S.A. 2001 Supp. 60-2308 and 75-646 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 60-2308 is hereby amended to read as follows: 60-2308. (a) Money received by any debtor as pensioner of the United States within three months next preceding the issuing of an execution, or attachment, or garnishment process, cannot be applied to the payment of the debts of such pensioner when it appears by the affidavit of the debtor or otherwise that such pension money is necessary for the maintenance of the debtor's support or a family support wholly or in part by the pension money. The filing of the affidavit by the debtor, or making proof as provided in this section, shall be *prima facie* evidence of the necessity of such pension money for such support. It shall be the duty of the court in which such proceeding is pending to release all moneys held by such attachment or garnishment process, immediately upon the filing of such affidavit, or the making of such proof.

(b) Except as provided in subsection (c), any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under sections 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue code of 1986 and amendments thereto shall be exempt from any and all claims of creditors of the beneficiary or participant. Any such plan shall be conclusively presumed to be a spendthrift trust under these statutes and the common law of the state. ~~All records of the debtor concerning such plan or arrangement and of the plan concerning the debtor's participation in the plan or arrangement shall be exempt from the subpoena process.~~

(c) Any plan or arrangement described in subsection (b) shall not be exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state department of social and rehabilitation services, of the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meaning ascribed to them in section 414(p) of the federal internal revenue code of 1986 and amendments thereto.

(d) The provisions of subsections (b) and (c) shall apply to any proceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on or after January 1, 1986, and is pending or on appeal July 1, 1986.

(e) Money held by the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto, the state department of social and rehabilitation services, any clerk of a district court or any district court trustee in connection with a court order for the support of any person, whether the money is identified as child support, spousal support, alimony or maintenance, shall be exempt from execution, attachment or garnishment process.

(f) (1) *The provisions of this subsection shall apply to any proceeding which:*

(A) *Is filed on or after January 1, 2002; or*

(B) *was filed prior to January 1, 2002, and is pending on or on appeal after January 1, 2002.*

(2) *Except as provided by paragraphs (3) and (4) of this subsection, if the designated beneficiary of a family postsecondary education savings account established pursuant to K.S.A. 2001 Supp. 75-640 et seq., and amendments thereto, is a lineal descendant of the account owner, all moneys in the account shall be exempt from any claims of creditors of the account owner or designated beneficiary.*

(3) *The provisions of paragraph (2) of this subsection shall not apply to:*

(A) *Claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding the date of the filing of a bankruptcy petition under 11 USC section 101 et seq.; or*

(B) *claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding an execution on judgment for such claims against the account owner.*

(4) *The provisions of paragraph (2) of this subsection shall not apply to:*

(A) *Claims of any creditor of an account owner, as to amounts ex-*

ceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding the date of the filing of a bankruptcy petition under 11 USC section 101 et seq.; or

(B) claims of any creditor of an account owner, as to amounts exceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding an execution on judgment for such claims against the account owner.

Sec. 2. K.S.A. 2001 Supp. 75-646 is hereby amended to read as follows: 75-646. (a) Family postsecondary education savings accounts established pursuant to the provisions of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto shall be governed by the provisions of this section.

(b) A family postsecondary education savings account may be opened by any person or persons who desire to save money for the payment of the qualified higher education expenses of the designated beneficiary. Such persons shall be considered the account owner.

(1) An application for such account shall be in the form prescribed by the state treasurer and contain the following:

(A) The name, address and social security number or employer identification number of the account owner or owners;

(B) the designation of a designated beneficiary;

(C) the name, address and social security number of the designated beneficiary;

(D) the certification relating to no excess contributions; and

(E) such other information as the state treasurer may require.

(2) The state treasurer may establish a nominal nonrefundable application fee for such application.

(c) ~~Only the account owner or owners~~ *From and after January 1, 2002, any person* may make contributions to the account after the account is opened.

(d) Contributions to accounts may be made only in cash.

(e) An account owner may withdraw all or part of the balance from an account on sixty-days notice or such shorter period as may be authorized under rules and regulations governing the program. ~~Such rules and regulations shall include provisions that will generally enable the determination as to whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. Such rules and regulations may require one or more of the following:~~

~~(1) An account owner seeking to make a qualified withdrawal must provide certification of qualified higher education expenses in a form and manner and pursuant to the method consistent with the requirements of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto; and~~

~~(2) withdrawals not meeting the requirements of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto shall be treated as nonqualified withdrawals by the program manager and if such withdrawals are subsequently deemed qualified withdrawals, the account owner must seek any refund of penalties directly from the program.~~

(f) (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established pursuant to the provisions of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto.

(2) An account owner may transfer all or a portion of an account to another family postsecondary education savings account, the designated beneficiary of which is a member of the family as defined in section 529 of the federal internal revenue code of 1986, as amended.

(3) Changes in designated beneficiaries and transfers under this subsection shall not be permitted to the extent that they would constitute excess contributions or unauthorized investment choices.

~~(g) In the case of any nonqualified withdrawal from an account, an amount equal to 10% of the portion of the withdrawal constituting earnings as determined in accordance with the principles of section 529 of the federal internal revenue code of 1986, as amended, shall be withheld as a penalty and paid to the Kansas postsecondary education savings program.~~

~~(h) The penalty prescribed in subsection (g) may be increased if the state treasurer determines that the amount of such penalty must be in-~~

~~creased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program as defined in section 529 of the federal internal revenue code of 1986, as amended.~~

~~(i) If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (g) or the amount withheld was less than the amount required to be withheld under such subsection for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the program at the same time that the account owner files the earlier of the account owner's state or federal income tax return for the taxable year of the withdrawal or if such account owner does not file such return, the due date for such returns but in any event on or before the due date for such return taking into account any authorized extensions.~~

~~(j) The program shall provide separate accounting for each designated beneficiary.~~

~~(k) (h) No account owner or designated beneficiary. Subject to the provisions of section 529 of the internal revenue code of 1986, in effect on January 1, 2002, or later versions as established in rules and regulations adopted by the treasurer, an account owner of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.~~

~~(i) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.~~

~~(j) Except as provided in K.S.A. 2001 Supp. 75-640 through 75-648, and amendments thereto, or section 529 of the federal internal revenue code of 1986, as amended, any withdrawal made within one year after an account has been opened under a qualified tuition program as defined in section 529 of the federal internal revenue code of 1986, as amended, is a nonqualified withdrawal.~~

~~(k) (1) The state treasurer shall adopt rules and regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount equal to the average amount of the qualified higher education expenses that would be incurred for five years of study at institutions of postsecondary education located in the midwest states. Such amount shall be determined annually by the state treasurer.~~

~~(2) Such rules and regulations shall include requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or transferred to another account.~~

~~(l) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and the account owner or owners, the designated beneficiary, or the distributee to the extent required by federal law or regulation.~~

~~(2) Statements shall be provided to each account owner at least once each year within 60 days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the state treasurer shall require to be reported to the account owner.~~

~~(3) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.~~

~~(m) (1) A state or local government, or agency or instrumentality thereof, or organization described in section 501(c) (3) of the federal internal revenue code of 1986, as amended, may open and become the account owner of an account to fund scholarships for persons whose identity will be determined upon disbursement.~~

~~(2) In the case of any account opened pursuant to provision (1) of this subsection, the requirement set forth in subsection (b) that a designated beneficiary be designated when an account is opened shall not apply and each individual who receives an interest in such account as a scholarship shall be treated as a designated beneficiary with respect to such interest.~~

~~(n) An annual fee may be imposed upon the account owner or owners for the maintenance of the account.~~

~~(q) An account must be open at least two years before a qualified~~

~~withdrawal can be made. The state treasurer may adopt rules and regulations providing for exceptions to the foregoing requirements for such extenuating circumstances as the state treasurer deems necessary and appropriate.~~

~~(r)~~ (o) An account owner or designated beneficiary of a Kansas postsecondary education savings account must be a citizen or resident of the United States of America.

~~(s)~~ (p) The program shall disclose the following information in writing to each account owner and prospective account owner of a family postsecondary education savings account:

- (1) The terms and conditions for purchasing a family postsecondary education savings account;
- (2) any restrictions on the substitution of beneficiaries;
- (3) the person or entity entitled to terminate the savings agreement;
- (4) the period of time during which a beneficiary may receive benefits under the savings agreement;
- (5) the terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;
- (6) the probable tax consequences associated with contributions to and distributions from accounts; and
- (7) all other rights and obligations pursuant to savings agreements, and any other terms, conditions and provisions deemed necessary and appropriate by the state treasurer.

~~(t)~~ (q) Nothing in K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto, or in any savings agreement entered into pursuant to K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto, shall be construed as a guarantee by the state of Kansas or any institution of postsecondary education that a beneficiary will be admitted to the institution of postsecondary education or, upon admission to any institution of postsecondary education, will be permitted to continue to attend or will receive a degree from such institution of postsecondary education.

(r) *The amendments to this section by this act shall apply to any action or transaction taken or occurring from and after January 1, 2002.*

Sec. 3. K.S.A. 2001 Supp. 60-2308 and 75-646 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.