

Approved: March 11, 1999  
Date

## MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Ralph Tanner at 9:00 a.m. on February 23, 1999 in Room 313-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research department  
Carolyn Rampey, Legislative Research Department  
Avis Swartzman, Revisor of Statutes  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

### **HB 2357 - Kansas Post Secondary Education Savings Program**

Representative Hermes made a motion to amend as requested from the sub committee. Representative O'Connor seconded the motion. The motion carried. (Attachment 1)

Representative Faber made a motion to amend the percentage for penalty from 15% to 10%. Representative Light seconded the motion. The motion failed.

Representative Mason made a motion to amend starting the program from three years to one year. Representative Helgerson seconded the motion. With consent from Representative Helgerson the motion was withdrawn.

Representative Mason made a motion to amend starting the program from three years to two years. Representative Helgerson seconded the motion. The motion carried.

Representative Benlon made a motion to report **HB 2357** favorably for passage, as amended. Representative O'Connor seconded the motion. The motion Carried.

### **HB 2201 - Juveniles and juvenile offenders, offenses committed at school**

Representative Horst made a motion to amend page 12, lines 25, 26, and 27 to go back to the original language of the statute for reporting purposes. Representative Hermes seconded the motion. The motion carried.

Representative Faber made a motion to report **HB 2201** favorably for passage, as amended. Representative Horst seconded the motion. Further Discussion.

Representative Crow made a motion to table the bill. Representative O'Connor seconded the motion. The motion failed.

Representative Storm made a motion to amend the bill to make the permissive language mandatory and instructions to the magistrate. Representative Lloyd seconded the motion. The motion failed.

Representative Benlon made a motion to report **HB 2201** favorably for passage, as amended. Representative Bethell seconded the motion. The motion carried.

### **HB 2341 - Schools, pupils discipline and behavior policy, immune from civil and criminal liability.**

Representative Faber made a motion to amend to strike the language and offered a balloon. Representative Crow seconded the motion. The motion carried. (Attachment 2)

Representative Benlon made a motion to report **HB 2341** favorably for passage, as amended. Representative Morrison seconded the motion. The motion carried.

### **HB 2196 - Driver's licenses and driving privileges of pupils, suspension or revocation upon expulsion from school.**

Representative Mason made a motion to amend **HB 2391** into **HB 2196**. Representative Morrison seconded the motion. With consent from Representative Morrison the motion was withdrawn.

Representative Bethell made a motion to amend the age to 13 years. Representative Horst seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 313-S Statehouse, at 9:00 a.m. on February 23, 1999.

Representative Hermes made a motion to report **HB 2196** favorably for passage, as amended. Representative Horst seconded the motion. The motion carried.

**HB 2202 - Weapon-free schools act, definition of weapon revised.**

Representative Benlon made a motion to report **HB 2202** favorably for passage. Representative Morrison seconded the motion. The motion carried.

**HB 2444 - Funding of dental hygiene education programs** and **HB 2479 - Dental hygienists student loan act**

Representative Benlon made a motion to amend the language in certain areas on **HB 2479**. Representative Morrison seconded the motion. The motion carried.

Representative Horst made a motion to do a technical cleanup by the Revisor on **HB 2479**. Representative Morrison seconded the motion. The motion carried.

Representative Mason made a motion to table **HB 2444**. Representative O'Connor seconded the motion. The motion carried.

Representative Horst made a motion to amend **HB 2479** that the administration of the program by the Board of Regents. Representative E. Peterson seconded the motion. The motion carried.

Representative Crow made a motion to remove Wyandotte County being removed from the list of under served area. Representative Storm seconded the motion. The motion carried.

Representative E. Peterson made a motion to report **HB 2479** favorably for passage, as amended. Representative Horst seconded the motion. Representative Helgerson was recorded as voting no.

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 24, 1999.

HOUSE EDUCATION COMMITTEE

GUEST LIST

DATE: February 23, 1999

NAME	REPRESENTING
Kent Gally	KDHA
<del>Kevin Robertson</del>	<del>Pro. Anita Ross</del>
Stacy Farmer	KABP
Peggy Wanne	STD
Jenese Oelke	STD
Jim Shallenberger	ST
Diane Gjerstad	USD 259
Mark Tallman	KABP
Shirley Sicilian	KDO Revenue
Craig Grant	KNEA
Debby Deming	Federico
Laurie Williams	Governor's Office

# HOUSE BILL No. 2357

By Committee on Education

9 AN ACT establishing the Kansas postsecondary education savings  
10 program.  
11

providing for certain modifications of the  
Kansas adjusted gross income of an individual;  
amending K.S.A. 1998 Supp. 79-32,117 and  
repealing the existing section

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

13 Section 1. The legislature hereby declares that the availability of im-  
14 proved access to and choice of higher education opportunities in this state  
15 will benefit the residents of the state and that the establishment of a  
16 postsecondary education savings program will assist residents in meeting  
17 the expenses incurred in availing themselves of higher education oppor-  
18 tunities. Therefore, it is the intention of this act to provide for develop-  
19 ment and administration of a postsecondary education savings program  
20 and to vest the state treasurer with powers to enable the treasurer to  
21 accomplish such purpose.

22 Sec. 2. There is hereby established a postsecondary education sav-  
23 ings program and such program shall be known and may be cited as the  
24 Kansas postsecondary education savings program.

The program shall be implemented and become  
operational on January 1, 2000.

25 Sec. 3. The purpose of the Kansas postsecondary education savings  
26 program is to authorize the establishment of family postsecondary edu-  
27 cation savings accounts and to provide guidelines for the maintenance of  
such accounts to:

29 (a) Enable residents of this state and other states to benefit from the  
30 tax incentive provided for qualified state tuition programs as defined in  
31 section 529 of the federal internal revenue code of 1986, as amended;  
32 and

33 (b) attract residents of this state to institutions of postsecondary  
34 education.

35 Sec. 4. As used in this act:

36 (a) "Account" or "family postsecondary education savings account"  
37 means an individual savings account established in accordance with the  
38 provisions of this act.

39 (b) "Account owner" means the individual who ~~enters~~ into a postse-  
40 condary education savings agreement pursuant to the provisions of this  
41 act. ~~The~~ account owner may also be the designated beneficiary of the  
42 account.

or individuals

enter

(c) "Designated beneficiary" means, with respect to an account ~~or~~

If the account is owned by one individual, the

1 ~~Account~~ the individual designated as the individual whose higher edu-  
2 cation expenses are expected to be paid from the account or ~~accounts~~

at the time the account is established" 1-2

3 (d) "Financial organization" means an organization authorized to do  
4 business in the state of Kansas and (1) which is an authorized fiduciary  
5 to act as a trustee pursuant to the provisions of an act of congress entitled  
6 "Employee Retirement Income Security Act of 1974", or an insurance  
7 company; and (2) (A) is licensed or chartered by the ~~insurance depart-~~  
8 ~~ment~~ (B) is licensed or chartered by the state bank commissioner, (C) is  
9 chartered by an agency of the federal government, (D) is subject to the  
10 jurisdiction and regulation of the securities and exchange commission of  
11 the federal government, or (E) is any other entity otherwise authorized  
12 to act in this state as a trustee pursuant to the provisions of an act of  
13 congress entitled "Employee Retirement Income Security Act of 1974."

in the case of a change in beneficiaries, the individual who is the new beneficiary

commissioner of

14 (e) "Institution of postsecondary education" means any institution of  
15 postsecondary education which qualifies as an eligible institution for fed-  
16 eral student aid programs.

is accredited by a nationally recognized accrediting agency or association, offers credit toward an undergraduate or graduate degree or other recognized postsecondary education credential, and

17 (f) "Member of family" means a family member as defined in section  
18 529 of the federal internal revenue code of 1986.

19 (g) "Program" means the Kansas postsecondary savings program es-  
20 tablished pursuant to this act.

, as amended

21 (h) "Qualified higher education expenses" means any qualified higher  
22 education expense included in section 529 of the federal internal revenue  
23 code of 1986.

24 (i) "Qualified withdrawal" means a withdrawal from an account to  
25 pay the qualified higher education expenses of the designated beneficiary  
26 of the account.

27 (j) "Nonqualified withdrawal" means a withdrawal from an account  
28 but ~~shall~~ not mean:

does

- 29 (1) A qualified withdrawal;
- 30 (2) a withdrawal made as the result of the death or disability of the  
31 designated beneficiary of an account; or
- 32 (3) a withdrawal made on the account of a scholarship.

received by the designated beneficiary to the extent the amount of the withdrawal does not exceed the amount of the scholarship

33 (k) "Treasurer" means the state treasurer.

34 (l) "Management contract" means the contract executed by the trea-  
35 surer and a financial organization selected to act as a depository and man-  
36 ager of the program.

or owners

37 (m) "Postsecondary savings agreement" means an agreement be-  
38 tween the state treasurer and the account owner.

39 (n) "Program manager" means a financial organization selected by  
40 the treasurer to act as a depository and manager of the program.

41 Sec. 5. (a) The state treasurer shall implement and administer the  
42 program under the terms and conditions established by this act.

43 (b) In furtherance of such implementation and administration, the



state treasurer shall have the authority and responsibility to:

(1) Develop and implement the program in a manner consistent with the provisions of this act through adoption of rules and regulations;

(2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the United States department of treasury and the federal internal revenue service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the federal internal revenue code of 1986, or any similar successor legislation;

(5) charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(6) develop marketing plans and promotion material;

(7) establish the methods by which the funds held in ~~such~~ accounts shall be dispersed;

(8) establish the method by which funds shall be allocated to pay for administrative costs;

(9) do all things necessary and proper to carry out the purposes of this act; and

(10) ~~promulgate and~~ rules and regulations necessary to administer the act.

Sec. 6. (a) The state treasurer may implement the program through use of financial organizations as account depositories and managers.

(b) The state treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instrument which will be held in accounts. The state treasurer shall select as program depositories and managers the financial organization, from among the bidding financial ~~organization~~ that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

(1) Financial stability and integrity of the financial organization;

(2) the safety of the investment instrument being offered;

(3) the ability of the investment instrument to track increasing costs of postsecondary education;

(4) the ability of the financial organization to satisfy recordkeeping and reporting requirements;

(5) the financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

as amended,

adopt

organizations

- 1 (6) the fees, if any, proposed to be charged to persons for opening
- 2 accounts;
- 3 (7) the minimum initial deposit and minimum contributions that the
- 4 financial organization will require;
- 5 (8) the ability of the financial organization to accept electronic with-
- 6 draws, including payroll deduction plans; and
- 7 (9) other benefits to the state or its residents included in the proposal,
- 8 including fees payable to the state to cover expenses of operation of the
- 9 program.
- 10 (c) The state treasurer may enter into a contract with a financial or-
- 11 ganization. Such financial organization management shall provide only
- 12 one type of investment instrument.
- 13 (d) The state treasurer may select more than one financial organiza-
- 14 tion and investment instrument for the program when the federal internal
- 15 revenue service has provided guidance that giving a contributor the choice
- 16 of two or more investment instruments under a state program will not
- 17 cause the program to fail to qualify for favorable tax treatment under
- 18 section 529 of the federal internal revenue code of 1986, as amended.
- 19 (e) A management contract shall include, at a minimum, terms re-
- 20 quiring the financial organization to:
- 21 (1) Take any action required to keep the program in compliance with
- 22 requirements of this act, and any actions not contrary to its contract to
- 23 manage the program to qualify as a "qualified state tuition plan" as de-
- 24 fined in section 529 of the federal internal revenue code of 1986, as
- 25 amended;
- 26 (2) keep adequate records of each account, keep each account seg-
- 27 regated from each other account and provide the state treasurer with the
- 28 information necessary to prepare the statements required by section 6,
- 29 and amendments thereto;
- 30 (3) compile and total information contained in statements required
- 31 to be prepared under section 6 and amendments thereto, and provide
- 32 such compilations to the state treasurer;
- 33 (4) if there is more than one program manager, provide the state
- 34 treasurer with such information as is necessary to determine compliance
- 35 with section 6 and amendments thereto;
- 36 (5) provide the state treasurer with access to the books and records
- 37 of the program manager to the extent needed to determine compliance
- 38 with the contract;
- 39 (6) hold all accounts for the benefit of the account owner;
- 40 (7) be audited at least annually by a firm of certified public account-
- 41 ants selected by the program manager and provide the results of such
- 42 audit to the state treasurer;
- 43 (8) provide the state treasurer with copies of all regulatory filings and

[7

[7

[or owners

1 reports made by the financial organization during the term of the man-  
2 agement contract or while the financial organization is holding any ac-  
3 counts, other than confidential filings or reports that will not become part  
4 of the program. The program manager shall make available for review by  
5 the state treasurer the results of any periodic examination of such man-  
6 ager by any state or federal banking, insurance or securities commission,  
7 except to the extent that such report or reports may not be disclosed  
8 under law; and

9 (9) ensure that any description of the program, whether in writing or  
10 through the use of any media, is consistent with the marketing plan de-  
11 veloped pursuant to the provisions of this act.

12 (f) The state treasurer may provide that an audit shall be conducted  
13 of the operations and financial position of the program depository and  
14 manager at any time if the state treasurer has any reason to be concerned  
15 about the financial position, the recordkeeping practices or the status of  
16 accounts of such program depository and manager.

17 (g) During the term of any contract with a program manager, the  
18 state treasurer shall conduct an examination of such manager and the  
19 manager's handling of accounts. Such examination shall be conducted at  
20 least biennially if such manager is not otherwise subject to periodic ex-  
21 amination by the state bank commissioner, the federal deposit insurance  
22 corporation or other similar entity.

23 (h) (1) If selection of a financial organization as a program manager  
24 or depository is not renewed, after the end of the financial organization's  
25 term:

26 (A) Accounts previously established and held in investment instru-  
27 ments at such financial organization may be terminated;

28 (B) additional contributions may ~~not~~ be made to such accounts;

29 (C) no new accounts may be placed with such financial organization;  
30 and

31 (D) existing accounts held by such depository shall remain subject to  
32 all oversight and reporting requirements established by the state  
33 treasurer.

34 (2) If the state treasurer terminates a financial organization as a pro-  
35 gram manager or depository, the state treasurer shall take custody of  
36 accounts held by such financial organization and shall seek to promptly  
37 transfer such accounts to another financial organization that is selected  
38 as a program manager or depository and into investment instruments as  
39 similar to the original instruments as possible.

40 (i) The state treasurer may enter into such contracts as it deems nec-  
41 essary and proper for the implementation of the program.

42 Sec. 7. (a) Family postsecondary education savings accounts estab-  
43 lished pursuant to the provisions of this act shall be governed by the

1-5



1 provisions of this section.

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

[or persons

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

8 (A) The name, address and social security number or employer iden-  
9 tification number of the account owner;

10 (B) the designation of a designated beneficiary;

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

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

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

15 (2) The state treasurer shall establish a nominal nonrefundable ap-  
16 plication fee for such application.

17 (c) Only the account owner may make contributions to the account  
18 after the account is opened.

[or owners

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

20 (e) An account owner may withdraw all or part of the balance from  
21 an account on sixty-days notice or such shorter period as may be author-  
22 ized under rules and regulations governing the program. Such rules and  
23 regulations shall include provisions that will generally enable the deter-  
24 mination as to whether a withdrawal is a nonqualified withdrawal or a  
25 qualified withdrawal. Such rules may require one or more of the  
26 following:

[and regulations

27 (1) An account owner seeking to make a qualified withdrawal must  
28 provide ~~certification~~ of qualified higher education expenses in a form  
29 and manner and pursuant to the method consistent with the requirements  
30 of this act; and

[certification

31 (2) withdrawals not meeting the requirements of this act shall be  
32 treated as nonqualified withdrawals by the program manager and if such  
33 withdrawals are subsequently deemed qualified withdrawals, the account  
34 owner must seek any refund of penalties directly from the program.

35 (f) (1) An account owner may change the designated beneficiary of an  
36 account to an individual who is a member of the family of the prior  
37 designated beneficiary in accordance with procedures established pur-  
38 suant to the provisions of this act.

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

(3) Changes in designated beneficiaries and transfers under this sub-

1 section shall not be permitted to the extent that they would constitute  
2 excess contributions or unauthorized investment choices.

3 (g) In the case of any nonqualified withdrawal from an account an  
4 amount equal to ~~5%~~ of the portion of the withdrawal constituting income  
5 as determined in accordance with the principles of section 529 of the  
6 federal internal revenue code of 1986, as amended, shall be withheld as  
7 a penalty and paid to the Kansas postsecondary education savings  
8 program.

[ 15%

[ plus an amount equal to the amount of  
interest earned on such portion

9 (h) The ~~percentage of the~~ penalty prescribed in subsection (g) may  
10 be increased if the state treasurer determines that the amount of such  
11 penalty must be increased to constitute a greater than de minimis penalty  
12 for purposes of qualifying the program as a qualified state tuition program  
13 as defined in section 529 of the federal internal revenue code of 1986, as  
14 amended.

15 (i) The ~~percentage of the~~ penalty prescribed in subsection (g) may  
16 be decreased by ~~rule or regulation~~ if it is determined that ~~—~~

[ the state treasurer

17 ~~(1) Such penalty is greater than is required to constitute a greater~~  
18 ~~than de minimis penalty for purposes of qualifying the program as a qual-~~  
19 ~~ified state tuition program as defined in section 529 of the federal internal~~  
20 ~~revenue code of 1986, as amended, and~~

21 ~~(a)~~ such penalty when combined with other revenue generated under  
22 this act is producing more revenue than is required to cover the costs of  
23 operating the program and recover any prior costs not previously  
24 recovered.

25 (j) If an account owner makes a nonqualified withdrawal and no pen-  
26 alty amount is withheld pursuant to subsection (g) or the amount withheld  
27 was less than the amount required to be withheld under such subsection  
28 for nonqualified withdrawals, the account owner shall pay the unpaid  
29 portion of the penalty to the program at the same time that the account  
30 owner files the earlier of the account owner's state or federal income tax  
31 return for the taxable year of the withdrawal or if such account owner  
32 does not file such return, the due date for such returns but in any event  
33 on or before the due date for such return taking into account any au-  
34 thorized extensions.

35 (k) The program shall provide separate accounting for each desig-  
36 nated beneficiary.

37 (l) No account owner or designated beneficiary of any account shall  
38 be permitted to direct the investment of any contributions to an account  
39 or the earnings thereon.

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

[ adopt

[ and

43 (n) (1) The state treasurer shall ~~promulgate~~ rules ~~or~~ regulations to

1 prevent contributions on behalf of a designated beneficiary in excess of  
2 ~~(\$8,000 per annum)~~

3 (2) Such rules ~~for~~ regulations shall include requirements that any ex-  
4 cess balance with respect to a designated beneficiary be promptly with-  
5 drawn in a nonqualified withdrawal or transfer to another account.

6 (o) (1) If there is any distribution from an account to any individual  
7 or for the benefit of any individual during a calendar year, such distri-  
8 bution shall be reported to the federal internal revenue service and the  
9 account owner, the designated beneficiary, or the distributee to the extent  
10 required by federal law or regulation.

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

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

21 (p) (1) A local government or organization described in section  
22 501(c) (3) of the federal internal revenue code of 1986, as amended, may  
23 open and become the account owner of an account to fund scholarships  
24 for persons whose identity will be determined upon disbursement.

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

31 (q) An annual fee may be imposed upon the account owner for the  
32 maintenance of the account.

33 (r) An account must be opened at least three calendar years before  
34 a qualified withdrawal can be made.

35 ~~(s)~~ The program shall disclose the following information in writing to  
36 each account owner and prospective account owner of a family postse-  
37 condary education savings account:

38 (1) The terms and conditions for purchasing a family postsecondary  
39 education savings account;

40 (2) any restrictions on the substitution of beneficiaries;

41 (3) the person or entity entitled to terminate the savings agreement;

42 (4) the period of time during which a beneficiary may receive benefits  
43 under the savings agreement;

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

and

or owners

or owners

before the designated beneficiary attains  
25 years of age and

Qualified withdrawals must be completed by  
the time the designated beneficiary attains 30  
years of age or within 10 years after the  
initial qualified withdrawal is made, whichever  
occurs first. 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.

(s) Either an account owner or the  
designated beneficiary of an account must be a  
resident of Kansas at the time an account is  
established.

(t)

6-1

1 (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;

4 (6) the probable tax consequences associated with contributions to and distributions from accounts; and

6 (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.

9 ~~[(t)]~~ Nothing in this act or in any savings agreement entered into pursuant to this act 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.

(u)

'

16 Sec. 8. (a) Nothing in this act shall be construed to:

17 (1) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

20 (2) guarantee that a designated beneficiary will be admitted to an institution of postsecondary education;

22 (3) create state residency for an individual merely because the individual is a designated beneficiary; or

24 (4) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

27 (b) (1) Nothing in this act shall create or be construed to create any obligation of the state treasurer, the state or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to:

31 (A) The rate of interest or other return on any account; and

32 (B) the payment of interest or other return on any account.

33 (2) The state treasurer by rules and regulations shall provide that every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the state and neither the principal deposited nor the investment return is guaranteed by the state.

38 Sec. 9. Moneys in a family postsecondary education savings account shall not be used toward the calculation of ~~Kansas state~~ financial aid under ~~financial aid~~ program administered by the state:

[any student

[of Kansas

41 Sec. 10. (a) The Kansas postsecondary education savings program trust fund is hereby established in the state treasury. Such savings trust fund shall consist of moneys deposited by depositors in accordance with

3 this act, moneys acquired from governmental and private sources and  
 4 general fund appropriations, if any. All interest derived from the deposit  
 5 and investment of moneys in such savings trust fund shall be credited to  
 6 the fund. At the end of any fiscal year, all unexpended and unencumbered  
 7 moneys in such savings trust fund shall remain therein and not be credited  
 8 or transferred to the state general fund or to any other fund.

state

7 (b) The state treasurer shall credit all moneys received in connection  
 8 with the Kansas postsecondary education savings program to the Kansas  
 9 postsecondary education savings program trust fund.

10 (c) All expenses incurred by the treasurer in developing and admin-  
 11 istering such postsecondary education savings program shall be payable  
 12 from the Kansas postsecondary education savings program trust fund.

13 ~~Sec. 11.~~ This act shall take effect and be in force from and after its  
 14 publication in the statute book.

See insert attached.

Sec. 12.



**INSERT #1**

Sec. 11. K.S.A. 1998 Supp. 79-32,117 is hereby amended read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(vii) The amount of any charitable contribution made to the

extent the same claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 1998 Supp. 79-32,204 and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203 and amendments thereto.

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a

supplemental annuity under the provisions of 26 U.S.C. 228b (1) and 228c (a)(1) et seq.

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249 and amendments thereto.

(xiii) For taxable years beginning after December 31, 1993, the amount of income earned on contributions deposited to an individual development account under K.S.A. 79-32,117h, and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation.

(xv) For all taxable years beginning after December 31, 1999, amounts contributed to each family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of section 4, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 12. K.S.A. 1998 Supp. 79-31,117 is hereby repealed.

Session of 1999

HOUSE BILL No. 2341

By Representatives Lloyd, Compton, Freeborn, Horst, Humerickhouse,  
Hutchins, Krehbiel, Light, Mason, O'Neal, Shultz, Storm, Tanner,  
Vining and Weber

2-9

11 AN ACT concerning schools; requiring boards of education to adopt pol-  
12 icies on pupil discipline and behavior; providing immunity from civil  
13 and criminal liability for certain actions of teachers, boards of educa-  
14 tion and school administrators.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. As used in this act:

18 (a) "Board of education" means the board of education of a unified  
19 school district or the governing authority of an accredited nonpublic  
20 school.

21 (b) "School" means a public school or an accredited nonpublic school.

22 (c) "Public school" means a school operated by a unified school dis-  
23 trict organized under the laws of this state.

24 (d) "Accredited nonpublic school" means a nonpublic school partic-  
25 ipating in the quality performance accreditation system.

26 (e) "School employees" means teachers, administrators and support  
27 staff employed by a school.

28 Sec. 2. The board of education of each school shall develop, adopt  
29 and broadly disseminate a written policy on pupil discipline and behavior.  
30 Copies of the policy shall be given to all school employees, parents and  
31 pupils. The state board of education shall provide boards of education  
32 with assistance in the preparation of policies on pupil discipline and be-  
33 havior. Policies shall be prepared in such form, parameters and manner  
34 as the state board shall require and shall be filed with the state board at  
35 a time to be determined and specified by the state board.

36 Sec. 3. Teachers hereby are given the authority and responsibility to  
37 use such appropriate means of discipline as are prescribed by the board  
38 of education in its written policy on pupil discipline and behavior. ~~So long~~  
39 ~~as a teacher follows approved policy in the exercise of the teacher's re-~~  
40 ~~sponsibility to maintain discipline in the teacher's classroom, such teacher~~  
41 ~~shall be immune from civil or criminal liability.~~ It shall be the responsi-  
42 bility of boards of education and the administrators employed by them to  
43 implement and control the written policy on pupil discipline and behavior  
44 and to provide legal support to each teacher exercising the teacher's au-

HB 2341



1 thorty and responsibility to maintain order and discipline in the teacher's  
2 classroom as long as the teacher follows the board of education's policy.  
3 Such support for the teacher shall include, but not be limited to, providing  
4 appropriate legal representation to defend the teacher against charges,  
5 seeking the issuance of a warrant or warrants for any person or persons  
6 threatening or assaulting a teacher, and the timely assistance and coop-  
7 eration with the appropriate authorities in the prosecution of any person  
8 or persons threatening or assaulting a teacher. ~~Boards of education and~~  
9 ~~school administrators providing such support shall be absolutely immune~~  
10 ~~from civil and criminal liability for actions authorized or required by this~~  
11 ~~section.~~

12 Sec. 4. This act shall take effect and be in force from and after its  
13 publication in the statute book.





## Kansas House Committee on Education House Bill 2341

The Kansas Trial Lawyers Association (KTLA) opposes HB 2341 so long as the bill contains the "immunity" language in Sections 2 and 3. "Immunity" legislation insulates wrongdoers from accountability for their wrongful acts; carries a high potential to harm Kansas families, and represents unsound public policy.

"Immunity" legislation is not less insidious when a governmental entity like a school district is granted immunity. When these laws excuse wrongful behavior they put all Kansans at risk and sacrifice safety.

Every school district certainly has some enrolled children who are discipline challenges. School boards, administrators and teachers need to work cooperatively to develop and implement effective discipline strategies to deal with these children.

On the other hand, it is essential to determine if a school measure protects the interests of children. There is always the potential that an overzealous or misguided school official or employee may inappropriately harm a child. No legitimate public or social purpose is served by denying such a child the opportunity to seek redress for the harm inflicted.

Section 18 of the Kansas Bill of Rights is a fundamental constitutional guarantee of personal freedom and provides that:

All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.  
(Emphasis added)

The common law's insistence on accountability acts as powerful deterrent against wrongful conduct, promotes respect for the law and encourages responsible conduct. The mindset that demands immunity before acting responsibly is simply flawed. Every time immunity is conferred it undermines and erodes the vital force of Section 18 of the Kansas Bill of Rights.

The liability of governmental entities including school districts is governed by the Kansas Tort Claims Act (KTCA) (K.S.A. 75-6101 et seq.) which became effective July 1, 1979. The KTCA swept away the broad tort immunity previously extended to governmental entities and replaced it with principles that made liability for wrongful conduct the rule and governmental immunity the exception. The KTCA contains certain exceptions to liability enumerated in 75-6104 and there are more than sufficient "exceptions" to enable a governmental entity to responsibly conduct its business. There is no compelling reason to dilute the mandate of the KTCA in the context of HB 2341.

Again, KTLA strongly opposes "immunity" legislation. If this bill advances the immunity language ought to be deleted from Sections 2 and 3.