

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:35 p.m. on February 5, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Hensley (excused)

Committee staff present: Ben Barrett, Legislative Research  
Carolyn Rampey, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Dale Dennis, Deputy Commissioner of Education  
Judy Steinlicht, Secretary

Conferees appearing before the committee: Tom Trigg, Blue Valley School District  
Mark Tallman, KASB  
Craig Grant, KNEA  
Peggy Hanna, State Treasurer's Office  
Doug Lockwood, American Century

Others attending: See Attached

List

Bill Introduction

Senator Vratil made a motion to introduce a bill regarding special education. Under current law when a school district proposes to take any special education action, such as evaluating a student, re-evaluating a student or changing the placement for services for that student, it requires parental consent. Sometimes problems develop when parents do not respond and do not provide consent. The bill would provide notice to parents that they have 60 days to give consent. If they do not give consent or request a due process hearing, their consent would be presumed on the 61<sup>st</sup> day. Motion was seconded by Senator Teichman. Motion carried.

Senator Vratil made a motion to introduce a bill to authorize a vanity license plate for the Autism Society of Johnson County Kansas with the proceeds of the sale of that plate to go to the Autism Society. Seconded by Senator Schodorf. Motion carried.

Hearing on SB442—Tax levy for employees contributions benefits fund

Tom Trigg, Blue Valley School District spoke in support of **SB442**. Mr. Trigg believes that school districts need the same benefits that cities and other municipalities have to establish an employee benefit fund from which to pay the employer's share of employee benefits. Blue Valley School District feels that if the same option was available to school districts, substantial benefits would be realized. Under **SB442**, school districts would be able to shift employee benefit costs to a separate fund, levy a tax to support the fund, and utilize a greater percentage of the general fund to provide a quality education for students. (Attachment 1)

Mark Tallman testified in opposition of **SB442**. KASB supports the intent of the bill, but they do not support the way the bill would operate. The bill would give school districts the same authority as other taxing subdivisions to adopt a property tax levy to finance employee benefits, such as health insurance, but there would be no state assistance. KASB believes that authority must be equalized so that all districts can exercise the same degree of discretion with the same local effort. KASB supports the State Board of Education's proposal for health insurance. Under that proposal, the state would phase in funding of 50 percent of the cost of single health insurance coverage over a three-year period. (Attachment 2)

Craig Grant, KNEA, would oppose **SB442** as it is written because of their long-standing policy against school finance changes that would further disequalizing the formula. KNEA acknowledges that health

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION at on February 5, 2002 in Room 123-S of the Capitol.

insurance is the number one concern of their members and if there were any one reason for going against their policy, this would be the reason. (Attachment 3)

Senator Oleen stated that during the interim LEPC meetings, testimony was heard about escalating costs of health care. The Committee asked the Health Care Commission to give the Committee ideas and plans whereby more educators might be able to access the current system. The Health Care Commission did respond with several plans and the information was given to the Committee in written form. Senator Oleen asked if the Health Care Commission might come before the Committee to present their ideas and plans. Chairman Umbarger agreed to contact them.

### **SB403--Postsecondary education savings program, elimination of two-year waiting period for withdrawal, elimination of the state penalty on nonqualified withdrawal and exemption from creditors**

Peggy Hanna, State Treasurer's office gave some history of the Learning Quest Education Savings Program which was created so that parents could save for their children's education. Kansas account owners can deduct up to \$2000 (\$4000 married filing jointly) from the account owner's adjusted gross income. Withdrawals are free from state and federal income taxes when used for qualified educational expenses.

Three of the changes recommended today are technical changes to ensure compliance with the Internal Revenue Code, Section 529 as amended by the 2001 Tax Act. Other changes are requests to better meet the needs of Kansas citizens participating in the program. The six basic changes requested are: protection from creditors, expansion of who can make deposits to accounts, change in requirement regarding withdrawals, elimination of 10% state penalty, allow account owner to direct investments and elimination of two year waiting period. These changes are explained in the attachment. (Attachment 4)

Doug Lockwood, American Century Investments, addressed the Committee on **SB403**. American Century was selected by the State Treasurer to serve as program manager for the Kansas Postsecondary Education Savings Program. American Century worked with the State Treasurer's office on the legislative proposals and supports their prompt passage. They believe the changes will improve an already excellent Kansas law and help to continue the program as one of the finest state-sponsored education savings programs in the nation. Mr. Lockwood further explained the changes and enhancements to the program. (Attachment 5)

The program and the proposed changes were discussed at length by the Committee and questions were answered by Peggy Hanna, Doug Lockwood and State Treasurer Tim Shallenburger. Time ran out and testimony will be continued tomorrow.

Senator Emler made a motion to approve the minutes for January 22, January 24 and January 28, 2002. Seconded by Senator Vratil. Motion carried.

Meeting adjourned 2:30 p.m.

**SENATE EDUCATION COMMITTEE GUEST LIST**

DATE - 2/5/02

<u>NAME</u>	<u>REPRESENTING</u>
Blanche Parks	Office of Kansas State Treasurer
Peggy Klanna	✓
Jim Shallenburger	- -
Dimit Gortac	" "
DOUG LOCKWOOD	AMERICAN CENTURY INVESTMENTS
John Peterson	American Century Investments
Jocelyn Jones	SQE
Kathy Olsen	KS Bankers Assn.
George Barbee	KS Community Bankers
Chuck Stokes	KS Bankers Assn.
Bob Kennedy	Community Bankers Assn
David Wyszynski	Citizen
Bill Houtgill	Governor's office
Joshua Lewis	Senator Teichman
Bruce Witt	Preferred Health Systems
Craig Grant	Craig Grant KNEA
Amy Brunner	KAB
Don Howles	USA
Elaine Frisbie	Dir of Budget

SENATE EDUCATION COMMITTEE

February 5, 2002 – 1:30 p.m.

Testimony Concerning SB 442

Presentation by:

Dr. Tom Trigg, Deputy Superintendent

Blue Valley Unified School District #229

PO Box 23902

Overland Park, KS 66283-0901

The Honorable Dwayne Umbarger and Members of the Senate Education Committee.

I appreciate the opportunity to appear before you today in support of SB 442. As you are aware, cities and other municipalities in Kansas have the option of establishing an employee benefit fund from which to pay the employer's share of employee benefits. They are also authorized to levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purpose of paying the employer's share of employee benefits.

If this same option were available to school districts, substantial benefits would be realized. In the 2001-02 school year, Blue Valley School District #229 employer cost of employee health insurance alone rose \$1.2 million. Health insurance costs are projected to rise an additional 24.6% or \$1.6 million in 2002-03.

In uncertain economic times such as these, the state needs to look for alternatives that allow local school districts to provide for the needs of their employees without lowering the quality of education provided to students. Senate Bill 442 offers such an alternative. School districts would be able to shift employee benefit costs to a separate fund, levy a tax to support the fund, and utilize a greater percentage of the general fund to provide a quality education for students.

Thank you for the opportunity to testify before you today. I encourage your support of SB 442 and would answer any questions you might have.

*Senate Education  
2/5/02  
Attachment 1*



KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS



1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
785-273-3600

Testimony on  
**SB 442 – Employee Benefits Fund**  
Before the  
**Senate Committee on Education**

By  
Mark Tallman, Assistant Executive Director/Advocacy  
Kansas Association of School Boards

February 5, 2002

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to offer comments on SB 442. We strongly agree with the intent of this bill, as we understand it, but we do not support the way the bill would operate.

SB 442 would give school districts the same authority as other taxing subdivisions to adopt a property tax levy to finance employee benefits, such as health insurance. It appears this fund would be outside the regular school finance formula and the local option budget, and that no state assistance would be provided.

Although KASB policies support allowing districts to “enrich their educational programs beyond the base budget,” we believe that authority must be equalized so that all districts can exercise the same degree of discretion with the same local effort. Without an equalization component, SB 442 would fail this test.

Furthermore, KASB believes that fundamental costs of education should be equally funded for all districts. There is clearly a growing problem with health insurance for school districts. To address that problem, KASB has joined with the school finance coalition in support of the State Board of Education’s proposal for health insurance. Under that proposal, the state would phase in funding of 50 percent of the cost of single health insurance coverage over a three-year period.

We are certainly aware that the state currently does not have the money to finance that proposal. Given the choice between authorizing school districts to raise local taxes to finance health insurance and raising taxes at the state level to provide this benefit for all districts, we support the second option.

Thank you for your consideration.

*Senate Education  
25-02  
Attachment 2*

Craig Grant Testimony  
Senate Education Committee  
Tuesday, February 5, 2002

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit with the Senate Education Committee about SB 442. Today we believe we must oppose the bill.

If there were any one reason for going against our policy to keep the school finance law equalized, this would certainly be the reason. The topic of health insurance is most likely the number one concern of our 24,000 members. Rising costs and higher deductibles are hurting the educational staff in this state. Private companies really are at an advantage when recruiting school employees when they offer better and, for the employee, cheaper plans.

However, because of our long-standing policy against school finance changes that advantage the "rich" districts versus the "poor" districts (thus disequalizing further the formula), we must stand in opposition to the bill. Thank you for listening to our concerns.

Senate Education  
2-5-02  
Attachment 3



STATE OF KANSAS

**Tim Shallenburger**  
TREASURER

900 SW JACKSON ST, SUITE 201  
TOPEKA, KANSAS 66612-1235

TELEPHONE  
(785) 296-3171

February 5, 2002

**To:** Chairman Umbarger and  
Members of the Senate Education Committee

**From:** Assistant State Treasurer, Peggy Hanna

**Re:** Kansas Learning Quest Education Savings Program  
Senate Bill 403

Chairman Umbarger and Members of the committee:

Thank you for the opportunity to submit comments on Senate Bill 403 on behalf of the Kansas State Treasurer's Office.

The Kansas Postsecondary Education Savings Program, now known as the Kansas Learning Quest Education Savings Program, was created by the Kansas Legislature in 1999 and officially opened on July 1, 2000. The Learning Quest program is administered by the Kansas State Treasurer and managed by American Century Investment Company. Under the program, an account may be opened as a saving fund to pay postsecondary education expenses. Kansas account owners can deduct up to \$2,000 (\$4,000 married filing jointly) from the account owner's Kansas adjusted gross income. Withdrawals are free from state and federal income tax when used for qualified education expenses.

Changes in federal tax laws continually affect this program, as well as programs offered by other states authorized under Internal Revenue Code Section 529. Three of the proposed changes we are presenting today represent technical changes to ensure compliance with Section 529 as amended by the 2001 Tax Act. Other changes are requests to better meet the needs of Kansas citizens participating in the Program.

*Senate Education  
2-5-02  
Attachment 4*

There are six basic changes requested:

- Protection from creditors (program enhancement)
- Expansion of who can make deposits to accounts (program enhancement)
- Change in requirement regarding withdrawals (technical change)
- Elimination of 10% state penalty (technical change)
- Allow account owner to direct investments (technical change)
- Elimination of 2 year waiting period (program enhancement)

As a brief summary, the recommended changes are:

- Page 1 Lines 34-37 Amends K.S.A. 2001 Supp. 60-2308(b). Removes language that exempts retirement accounts from the subpoena process. Members of the LEPC committee requested this amendment.
- Page 2, Lines 14 – 19 K.S.A. 60-2308 is amended with a new subsection (f) which provides that any money or assets payable to an account owner or beneficiary shall be exempt from any creditors of the account owner or the designated beneficiary. The addition of this language would exempt accounts from bankruptcy proceedings. The effect of the recommended change would be to protect accounts from creditors.
- Page 2, Line 19 Adds a new section to K.S.A. 2001 Supp. 60-2308 which incorporates all filings back to January 1, 2002.
- Page 2, Line 40 This section amends K.S.A. 2001 Supp. 75-646 to incorporate the January 1, 2002 effective date to be consistent with other amendments. It makes it possible for any person to make a deposit to an existing account.
- Page 3, Lines 2 –15 K.S.A. 2001 Supp. 75-646, is amended to delete language that requires the program manager to perform due diligence regarding non-qualified withdrawals. Changes to Section 529, as stated in IRS Notice 2001-81, now place the responsibility on the account owner instead of the program administrator or the program manager. **Deleted language states that:**
  - a) Rules and regulations shall include provisions that will determine whether a withdrawal is a nonqualified withdrawal or qualified withdrawal;
  - b) An account owner seeking a qualified withdrawal must provide certification of qualified higher education expenses;
  - c) Withdrawals not meeting requirements shall be treated as nonqualified withdrawals.

- Page 3 Lines 28 - 43 – Page 4 Line 1-4 K.S.A. 2001 Supp 75—646 is amended to remove reference to a state imposed penalty. **Deleted language states the following:**
  - a) Provisions that provide for a 10% penalty for nonqualified withdrawals from an account, that equal 10% of the portion of withdrawal constituting earnings as determined by Section 529 of the federal Internal Revenue Code, and withheld as a penalty and paid to the Program. Under new federal legislation, a 10% federal penalty is imposed, which would result in a 20% percent penalty for non-qualified withdrawals under the Kansas program.
  - b) The provision that allows the State Treasurer to determine the amount of the penalty.
  - c) Language that when an account owner makes a nonqualified withdrawal and no penalty amount is withheld, the account owner shall pay the unpaid portion of the penalty to the program at the time the account owner files the federal income tax return for the taxable year of the withdrawal.
  
- Page 4 Line 8 K.S.A. 2001 Supp. 75-646 is amended to add the phrase “Subject to the provisions of Section 529 of the Internal Revenue Code of 1986, in effect, as amended,.....any account owner of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.”
  
- Page 4 Line 13 K.S.A. 2001 Supp. 75-646 is amended to add new language that references the inclusion of these accounts under the protections available under K.S.A. 60-2308, as amended by this bill. The language states the assets of any interest in an account shall not be used to satisfy the debts of an account owner or a designated beneficiary of an account.
  
- Page 5 Line 8 – 12 K.S.A. 2001 Supp. 75-646 is amended to delete language that an account must be opened at least two years before a qualified withdrawal can be made. The two year waiting period is not beneficial to Kansans rolling into the program from another state. The waiting period is cited as one negative aspect of the Kansas plan that could make it less attractive to investors.
  
- Page 5, Line 40 K.S.A. 2001 supp. 75-646 is amended to add language that makes changes to this section applicable to any action or transaction after January 1, 2002. This change keeps our plan in compliance with Section 529.



- Page 5, Line 43 K.S.A. 2001 Supp 75-646 is amended to delete the words “Statute Book” and insert the words “Kansas Register” to reflect an earlier effective date.

The Kansas Learning Quest Education Savings Program has been quite successful with current assets of \$173 million. Over half the 28,000 accounts belong to Kansas residents. Learning Quest has been ranked by *Kiplinger Magazine* in the “Top 5 College Savings Programs in the Nation”. We believe if Senate Bill 403 as amended is passed, it will ensure the Kansas Learning Quest Education Savings Program will become even more successful and beneficial to Kansas citizens.

I appreciate the opportunity to appear before you. Thank you for your time and I stand for any questions you may have.

*BCP*

## SENATE BILL No. 403

By Legislative Educational Planning Committee

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

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

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

27 (b) Except as provided in subsection (c), any money or other assets  
28 payable to a participant or beneficiary from, or any interest of any partic-  
29 ipant or beneficiary in, a retirement plan which is qualified under sections  
30 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue  
31 code of 1986 and amendments thereto shall be exempt from any and all  
32 claims of creditors of the beneficiary or participant. Any such plan shall  
33 be conclusively presumed to be a spendthrift trust under these statutes  
34 and the common law of the state. ~~All records of the debtor concerning~~  
35 ~~such plan or arrangement and of the plan concerning the debtor's partic-~~  
36 ~~ipation in the plan or arrangement shall be exempt from the subpoena~~  
37 ~~process.~~

38 (c) Any plan or arrangement described in subsection (b) shall not be  
39 exempt from the claims of an alternate payee under a qualified domestic  
40 relations order. However, the interest of any and all alternate payees  
41 under a qualified domestic relations order shall be exempt from any and  
42 claims of any creditor, other than the state department of social and  
43 rehabilitation services, of the alternate payee. As used in this subsection,

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1 terms "alternate payee" and "qualified domestic relations order" have  
 2 the meaning ascribed to them in section 414(p) of the federal internal  
 3 revenue code of 1986 and amendments thereto.

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

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

14 (f) *Any money or other assets payable to an account owner or desig-*  
 15 *gnated beneficiary from, or any interest of any account owner or desig-*  
 16 *gnated beneficiary in, a family postsecondary education savings account*  
 17 *established in accordance with the provisions of K.S.A. 2001 Supp. 75-*  
 18 *640 to 75-648, and amendments thereto, shall be exempt from any and*  
 19 *all claims of creditors of the account owner or designated beneficiary.*

20 Sec. 2. K.S.A. 2001 Supp. 75-646 is hereby amended to read as fol-  
 21 lows: 75-646. (a) Family postsecondary education savings accounts estab-  
 22 lished pursuant to the provisions of K.S.A. 2001 Supp. 75-640 to 75-648,  
 23 and amendments thereto shall be governed by the provisions of this  
 24 section.

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

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

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

33 (B) the designation of a designated beneficiary;

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

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

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

38 (2) The state treasurer may establish a nominal nonrefundable ap-  
 39 plication fee for such application.

40 (c) ~~Only the account owner or owners may make contributions to the~~  
 41 ~~account after the account is opened.~~

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

43 (e) An account owner may withdraw all or part of the balance from

The provisions of this subsection shall apply to any proceeding  
 which: (1) Is filed on or after January 1, 2002; or (2) was filed  
 prior to January 1, 2002, and is pending on or on appeal after  
 January 1, 2002.

From and after January 1, 2002, any person

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1 account on sixty-days notice or such shorter period as may be author-  
2 ized under rules and regulations governing the program. ~~Such rules and~~  
3 regulations shall include provisions that will generally enable the deter-  
4 mination as to whether a withdrawal is a nonqualified withdrawal or a  
5 qualified withdrawal. Such rules and regulations may require one or more  
6 of the following:

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

11 (2) withdrawals not meeting the requirements of K.S.A. 2001 Supp.  
12 75-640 to 75-648, and amendments thereto shall be treated as nonqual-  
13 ified withdrawals by the program manager and if such withdrawals are  
14 subsequently deemed qualified withdrawals, the account owner must seek  
15 any refund of penalties directly from the program.

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

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

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

28 (g) ~~In the case of any nonqualified withdrawal from an account, an~~  
29 ~~amount equal to 10% of the portion of the withdrawal constituting earn-~~  
30 ~~ings as determined in accordance with the principles of section 520 of~~  
31 ~~the federal internal revenue code of 1986, as amended, shall be withheld~~  
32 ~~as a penalty and paid to the Kansas postsecondary education savings~~  
33 ~~program.~~

34 ~~(h) The penalty prescribed in subsection (g) may be increased if the~~  
35 ~~state treasurer determines that the amount of such penalty must be in-~~  
36 ~~creased to constitute a greater than de minimis penalty for purposes of~~  
37 ~~qualifying the program as a qualified state tuition program as defined in~~  
38 ~~section 520 of the federal internal revenue code of 1986, as amended.~~

39 ~~(i) If an account owner makes a nonqualified withdrawal and no pen-~~  
40 ~~alty amount is withheld pursuant to subsection (g) or the amount withheld~~  
41 ~~is less than the amount required to be withheld under such subsection~~  
42 ~~for nonqualified withdrawals, the account owner shall pay the unpaid~~  
43 ~~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 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.

~~(m)~~ (j) (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.

~~(n)~~ (k) (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.

~~(o)~~ (l) (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

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, any

(j) Subject to the provisions of subsection (f) of K.S.A. 60-2308, aat, the assets of and any interest in an account shall not be used to satisfy the debts of an account owner or a designated beneficiary of an account.

(Re letter subsections)



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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.

~~(p)~~ (m) 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)~~ (n) 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)~~ (o) 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)~~ (p) 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.

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 statute book.

(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.

Senate Education Committee

February 5, 2002

Testimony on Senate Bill 403

Doug Lockwood, Vice President – Shareholder Education, American Century Investments

American Century Investments is honored to have been selected by the State Treasurer to serve as program manager for the Kansas Postsecondary Education Savings Program (KPESP). This outstanding program was created by the Kansas Legislature in 1999. American Century acts as financial depository, record keeper and investment manager for thousands of persons and markets the program to anyone interested in saving for postsecondary education.

American Century is a Kansas City company that has grown to become one of the nation's largest families of direct-marketed mutual funds. We manage more than \$85 billion in 70 mutual funds for more than two million shareholders nationwide. In Kansas, we serve more than 80,000 Kansas investors who entrust us with more than \$2 billion of their money. We also employ over 900 Kansas residents.

Senate Bill 403 contains both important technical corrections and modest policy changes to the Kansas Postsecondary Education Savings Plan law. American Century has worked with the State Treasurer's office on these legislative proposals and supports their prompt passage. We believe the changes will improve an already excellent Kansas law and help to continue the program as one of the finest state-sponsored education savings programs in the nation.

American Century Investments is pleased and proud to have the opportunity to serve the State of Kansas and I will be happy to answer any questions about the improvements proposed in Senate Bill 403.

Proposed Legislative Changes

1. Expand Permissible Contributors to Include Non-Account Owners.

Proposed Change: Modify K.S.A. 75-646( c ) to allow any person to make contributions.

Rationale: This change will allow individuals, partnerships, corporations, etc. to either open an account for the beneficiary of their choice or contribute to an existing account owned by someone else. This will help those who would like to help an individual save for college but do not want account owner responsibilities. Any Kansas taxpayer who contributes to a KPESP account will be entitled to a state tax deduction, whether or not they are the account owner.

2. Eliminate the Requirement to Verify Qualified Withdrawals.

Proposed Change: Modify K.S.A. 75-646( e ) to remove the requirement for account owners to provide the program manager proof that an account withdrawal will be used for education expenses.

*Senate Education  
2-5-02  
Attachment 5*

Rationale: Although this was a requirement of prior federal law, it was removed by IRS Notice 2001-81. The federal rules now place the responsibility on the account owner to report a withdrawal as either qualified or non-qualified. This reporting will be done with their income tax return. The proposed change to the Kansas statute will make it consistent with federal rules.

3. Eliminate the State-Level Penalty for Non-Qualified Withdrawals.

Proposed Change: Eliminate K.S.A. 75-646( g-i ) to remove the Kansas 10% penalty for non-qualified withdrawals.

Rationale: This previous federal requirement was replaced by the provision of the 2001 Tax Act (EGTRRA) that provides for a 10% federal penalty tax on any non-qualified withdrawal. If the state penalty is left in place, there will be double penalties for a non-qualified withdrawal from the Kansas program. This will put the program at a competitive disadvantage to other states' programs.

4. Provide Limited Investment Direction for Account Owners.

Proposed Change: Modify K.S.A. 75-646( k ) to allow account owners to periodically change their investment selection within federal rules.

Rationale: The prior federal prohibition on investment direction by an account owner was removed by IRS Notice 2001-55. The federal rules now allow a change in investment selection upon change of beneficiary or once per calendar year with the same beneficiary. This proposed change will allow a Kansas account owner the privilege provided by federal rules.

5. Eliminate the Two-Year Waiting Period for Qualified Withdrawals.

Proposed Change: Eliminate K.S.A. 75-646( q ) to remove the requirement for an account owner to wait two years before their first qualified withdrawal.

Rationale: The federal rules do not contain a similar requirement, so this Kansas rule makes a withdrawal potentially subject to a 10% penalty even if it's used for education expenses. This rule puts the program at a competitive disadvantage to other states' programs. It should also be removed to coordinate with the removal of the state-level penalty (see # 3 above).

6. Add Creditor Protection to KPESP Accounts.

Proposed Change: Modify K.S.A. 60-2308 and 75-646( q ) to add exemption from creditor claims for KPESP accounts.

Rationale: This change will provide protection for account balances similar to that already provided by Kansas statute for IRAs and other retirement accounts. Several states, including Nebraska and Colorado, have already made this change to their programs. This will keep the program competitive with other states that are adopting similar rules and reinforce the position that Kansas encourages active saving for education goals. Kansas fraudulent conveyance

statutes already protect a bankruptcy or judgment creditor from someone attempting to shelter assets by way of a KPESP account.

7. Make Changes Retroactive to January 1, 2002.

Proposed Change: Modify K.S.A. 75-646 to make all proposed changes retroactive to January 1, 2002.

Rationale: This change will clarify that the changes will be applied to withdrawals or other account actions taken after December 31, 2001. This will eliminate the need for state rulings on the various transactions of account owners between January 1, 2002 and passage of these changes into law.



# Can Creditors Invade Qualified College Savings Plans?

by Jeffrey L. Kwall, J.D.

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Although the attractive tax and control features of qualified college savings plans have received much attention, surprisingly little light has been shed on whether the contributor's creditors can invade these plans. The author explores the risks to which college savings plans are exposed and surveys the level of protection offered by each state.

Perhaps the most attractive savings vehicle for a child's college education is the relatively new breed of qualified state tuition program now offered by almost every state. Since 1997, state plans that satisfy the requirements of Internal Revenue Code Section 529 have offered parents and relatives at all income levels the opportunity to set aside up to \$100,000 or more per child in highly tax-favored accounts with each account earmarked for a specific child's college expenses.<sup>1</sup> Amounts transferred to these plans are treated as completed gifts generally free of gift tax, as well as estate tax when the contributor dies.<sup>2</sup> Moreover, no income taxes are imposed on plan earnings until withdrawal. The earnings are taxed at the child's rate when used to pay higher education expenses. Even this limited tax burden may soon disappear. Strong support exists in Congress for exempting plan earnings used for higher education from all income tax.

Many of the tax advantages derived from a qualified state tuition program can likewise be enjoyed when money is set

aside for a child's education in a more traditional custodial account.<sup>3</sup> Monies in a custodial account are property of the child, however, and can be used as the child wishes at age 18 (or 21 in some jurisdictions). In contrast, the contributor to a qualified state tuition program can redirect monies to a different beneficiary or even reclaim the funds, normally at any time.<sup>4</sup> Withdrawn earnings not applied to qualified college expenses are subject to income tax at the contributor's rate and a penalty (typically ten percent of earnings) is imposed—a small price for eliminating the worry that Junior will squander college money on a flashy convertible.

One who contributes funds to a qualified state tuition program may not direct the investment of such funds, a potentially unattractive feature of this college savings option.<sup>5</sup> Each state sets investment guidelines, however, that generally permit the contributor to select among different investment strategies when the initial contribution is made. The state plans are typically administered by large investment companies that, in turn, market the plans to potential contributors. The many alternative investment strategies now offered tends to mitigate the significance of the

participant's inability to select particular investments.

While much attention has been focused on the attractive tax and control features of qualified state tuition programs,<sup>6</sup> surprisingly little light has been shed on the risk that the contributor's creditors might reach the plan's assets and deprive the beneficiary of funds that would have been available had a more traditional custodial account been used. Unfortunately, the extent to which qualified tuition plans are protected from the contributor's creditors varies from state to state. This article will explore the risks to which these plans are exposed and identify the level of protection that now exists in each state. Since most state plans are available to nonresidents of the sponsoring state, **the level of creditor protection provided by state law is an important element in the plan selection.**

The reader is cautioned that the law of each state is idiosyncratic and is often ambiguous or incomplete. Moreover, the states are frequently modifying the rules governing their plans. Hence, an independent review of all up-to-date law should be undertaken before advising on, or committing funds to, a particular plan.

**Acknowledgment:** Professor Kwall thanks Richard Rosenberg for draft comments, and Regina Rathnau and Micki Unkrich for research assistance.



## Tuition Credit Plan Versus Savings Plan

At present, qualified state tuition programs exist in all states but Georgia and South Dakota.<sup>7</sup> The remaining 48 states have enacted plans in one, or both, of two varieties. The tuition credit plan involves the advance purchase of credits that may be applied toward tuition at designated state schools when the plan beneficiary reaches college age. While tuition credit plans may be attractive to some, they do not offer the flexibility that most contributors seek. Generally, these plans are limited to in-state residents and offer the greatest benefits at schools in the home state. As a result, tuition credit plans are unlikely to attract the bulk of future college savings due to the much greater flexibility offered by the increasingly popular savings plans.

State savings plans offer the greatest benefits to most contributors and, therefore, are the focus of this article. These flexible plans have rapidly proliferated in recent years. Savings plans generally are not restricted to home state residents, and amounts accumulated in these plans can be used at virtually any institution of higher learning. Although each savings plan must have a designated beneficiary, the contributor may change the beneficiary or even withdraw the funds, generally at anytime. If the beneficiary is changed to another member of the same family, no adverse income tax effects result.<sup>8</sup> If amounts are withdrawn by the contributor, the earnings are included in the contributor's income and a penalty of at least ten percent of the earnings is imposed. Although some states restrict the ability of the contributor to take back the funds, these restrictions are not mandated by federal law. There will likely be much pressure to eliminate these restrictions in light of the large number of competing state plans.

At present, 42 states have qualified tuition programs of the savings plan variety (see column 2 of Table 1). All but eight of

these 42 plans are available to nonresidents of the sponsoring state (see column 3 of Table 1). Certain states offer additional benefits to in-state residents (such as state tax savings) that might make those plans the best choice for their residents.<sup>9</sup>

## Threat of Consensual Claims

The ability of a contributor to voluntarily jeopardize amounts contributed to a qualified savings plan is significantly constrained by federal law. To satisfy the Internal Revenue Code's qualification requirements, the state may not permit any interest in a qualified state tuition program or any portion thereof to be used as security for a loan.<sup>10</sup> Some states have enacted more stringent restrictions by, for example, prohibiting assignment for the benefit of creditors or imposing blanket restrictions on any sale, transfer, assignment or pledge of an interest in the plan (see column 4 of Table 1).

The appeal of plans offered by states with more than the minimum transfer restrictions depends on the mind-set of the contributor. A contributor whose primary goal is plan protection would not regard the more stringent restrictions as disadvantageous. On the other hand, a contributor who wishes to maximize future flexibility regarding all assets, including qualified savings plan assets, might be more inclined to favor a state plan that imposes minimum restrictions on the ability of the contributor to alienate his interest in the plan. Regardless of the contributor's preference, it is important to be aware of the restrictions imposed by the states under consideration so an informed decision can be made.

## Threat of Involuntary Claims

Of course, the greatest potential threat to the qualified savings plan is the ability of

nonconsensual claimants—that is, judgment creditors—to reach plan assets. The ability of judgment creditors to reach the assets of qualified savings plans varies from state to state. At present, the following states' qualified college savings plans are governed by express statutory language insulating the plans from the contributor's creditors: Alaska, Colorado, Kentucky, Louisiana, Maine, Nebraska, Ohio, Pennsylvania, Tennessee, Virginia and Wisconsin (see column 5 of Table 1).

The restrictions vary, with some states using broad, terse statutory language simply protecting plan assets from "the claims of creditors." Other states delineate the specific actions against which the plan is protected, such as from "attachment or garnishment or any process of court." Though subtle differences exist in the protection offered by these states, all the states with statutes restricting the contributor's creditors offer greater protection than states without creditor protection statutes.<sup>11</sup>

In the absence of express statutory protection, there is little reason to suspect that courts will protect plan assets from the contributor's judgment creditors.

Although some courts may be receptive to public policy arguments in support of protecting education savings, it would be imprudent to take much comfort in that prospect. In fact, one state has already rendered an advisory opinion confirming that fund assets can indeed be reached by creditors in the absence of explicit statutory restrictions.<sup>12</sup> Thus, if all other factors are equal, it would generally be advisable for contributors to select a plan in one of the states that now provides statutory protection from the contributor's creditors.

## Threat of Divorce and Child Support Claims

Even in states that protect qualified savings plans from the claims of creditors, it



should not be assumed that such protection will extend to alimony and child support claims. In the analogous area of pension law, significant variability exists among the states when it comes to ascertaining whether a state exemption statute overrides a claim for alimony or child support.<sup>13</sup> It is unlikely that many courts would be receptive to the argument that assets should be preserved for future education when immediate familial needs exist for these funds. Courts are particularly likely to be wary of this argument when the opportunity exists for contributors to withdraw plan funds for their own use. Thus, **qualified savings plans are likely to remain vulnerable to divorce and child support claims.**<sup>14</sup>

### Threat of Bankruptcy Claims

Otherwise protected qualified savings plans also are vulnerable when the contributor is in bankruptcy. At least one bankruptcy court has held that funds in a prepaid tuition plan created prior to the enactment of IRC Section 529 were part of the bankruptcy estate—that is, could be reached by creditors of the bankrupt contributor.<sup>15</sup> Thus, under present law, the contributor's bankruptcy poses a serious risk to college savings plans.

In recent years, however, **Congress has passed legislation** that would protect the assets of qualified state tuition programs from claims of creditors of the bankrupt contributor by **excluding such plans from the bankruptcy estate.** These bills were vetoed by former President Clinton due to other objectionable provisions. Because strong bipartisan support exists for this proposal, **qualified college savings plans eventually will most likely be protected in bankruptcy.** In the meantime, however, the risks associated with bankruptcy must be factored into the decision as to whether to use a qualified savings plan or an alternative college savings device.

### Conclusion

Because the college savings plan concept is relatively new, it is not surprising that little light has been shed on exposure to creditor claims. Over the past few years, several states have enacted creditor protection statutes. In light of the rush by the states to maximize the attractiveness of their savings plans, **more states will likely join the trend toward offering creditor protection.** It is also likely that federal bankruptcy law protection will eventually be in place. In the meantime, **it behooves contributors to evaluate carefully the creditor protection offered by each state in deciding among the plans of different states and other education savings alternatives.** With careful attention to the creditor protection question, the qualified savings plan will still likely prove to be the most attractive college savings vehicle in most cases.



### Endnotes

1. Raymond D. Loewe and K.C. Dempster, "Three Years Later: Are Section 529 Plans Right for Your Clients?" *Journal of Financial Planning*, February 2001, pp. 90-98.
2. One can contribute a lump sum up to \$50,000 (\$100,000 if one's spouse joins in the transfer) for each beneficiary without triggering a gift tax or invading the donor's unified credit. IRC Section 529(c)(2)(B). Contributions, earnings and plan appreciation are then outside the donor's estate, although a portion of any annual contribution greater than \$10,000 may be included in the donor's estate if the donor dies within five years. IRC Section 529(c)(4)(C).
3. Only \$10,000 (\$20,000 if one's spouse joins in the transfer) may be transferred to each beneficiary in a single year without triggering a gift tax or invading the donor's unified credit. Income earned in a custodial account is taxed currently, at the child's rate, but subject to the "kiddie tax" (unearned income in excess of \$1,400 for a child under 14 is taxed at parent's rate).
4. Some states impose restrictions on the timing and amount of withdrawals.
5. IRC Section 529(b)(5).
6. See, for example, Robert Keebler, "Take a Close Look at College Savings Plans," *Taxes*, Vol. 78, August 2000, p. 6.
7. The District of Columbia also does not have a program.
8. IRC Section 529(c)(3)(C). Gift tax consequences may occur if the new beneficiary is in a younger generation. IRC Section 529(c)(5)(B).
9. For a wealth of information on the various state plans, see [www.savingforcollege.com](http://www.savingforcollege.com).
10. IRC Section 529(b)(6).
11. **Even in states with creditor protection statutes, any transfer made with the intent of hindering or defrauding creditors, or by an insolvent contributor, may be subject to attack as a fraudulent conveyance.**
12. See Nevada Attorney General Opinion No. 99-10, 1999 Nev. AG LEXIS 16.
13. See generally, Jane Draper, Annotation, Enforcement of Claims for Alimony or Support Against Exemptions, 52 ALR 5th 221 (1999).
14. Additional uncertainties exist as to how the death or disability of the contributor affects creditor protection.
15. In re Darby, 212 B.R. 382 (1997). On appeal, the court imposed a constructive trust because grandparent had funded the contribution. *Darby v. McGregor*, 226 B.R. 126 (1998).

TABLE 1<sup>1</sup> / PAGE 1

1	2	3	4	5
State	Has state adopted a college savings plan per IRC Section 529?	Is state's college savings plan open to nonresidents?	To what extent is contributor restricted from exposing plan to consensual claims?	Does state law expressly protect the plan from creditors?
Alabama	No <sup>2</sup>			
Alaska	Yes <sup>2</sup> [AK ALS 3 § 14.40.802(2)]	Yes [AK ALS 3 § 14.40.802(7)]	An account may not be assigned, pledged or otherwise used to secure a loan or other advancement, and is not subject to involuntary transfer or alienation. [AK ALS 3 § 14.40.802(h)(4),(5)]	An account is exempt from a claim by the creditors of a participant or of a beneficiary. [AK ALS 3 § 14.40.802(h)(1)]
Arizona	Yes [A.R.S. § 15-1874(F)(1)]	Yes [A.R.S. § 15-1871]	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 is of no force and effect. [A.R.S. § 15-1875(P)]	No
Arkansas	Yes [Ark. Stat. Ann. 6-84-102]	Yes [Ark. Stat. Ann. 6-84-103]	No account or any interest in an account shall be assignable or pledged or otherwise used to secure or obtain a loan or other advancement. [Ark. Stat. Ann. 6-84-110(b)]	No
California	Yes [Cal Stats Ch 851 §7]	Yes [Cal Ed Code § 69980]	Neither the contributions, nor any interest derived therefrom, may be pledged as collateral for any loan. [Cal Ed Code § 69986(a)]	No
Colorado	Yes <sup>2</sup> [C.R.S. § 23-3.1-305(6)(a)]	Yes [C.R.S. 23-3.1-308]	Neither an account owner nor a designated beneficiary may use an interest in an account as a security for a loan. Any pledge of an interest in an account is of no force and effect. [C.R.S. 23-3.1-306 (14)]	Moneys credited to or expended from the savings trust fund by or on behalf of an account owner, depositor or designated beneficiary of a savings contract... are exempt from all claims of creditors of the account owner, depositor, designated beneficiary or the authority. [C.R.S. 23-3.1-307(4)]
Connecticut	Yes [Conn. Gen. Stat. §3-220]	Yes [Conn. Gen. Stat. §3-22f]	To extent required by IRC §529. [Conn. Gen. Stat. §3-22o]	No
Delaware	Yes [14 Del. C. §3483]	Yes [14 Del. C. §3485]	To extent required by IRC §529. [14 Del. C. §3486(1)]	No
District of Columbia	No			
Florida	No <sup>2</sup>			
Georgia	No			
Hawaii	Yes [HRS §256-3]	Yes [HRS §256-2]	Neither an account owner nor a designated beneficiary shall 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. [HRS §256-4(l)]	No



TABLE 1 / PAGE 2

1	2	3	4	5
State	Has state adopted a college savings plan per IRC Section 529?	Is state's college savings plan open to nonresidents?	To what extent is contributor restricted from exposing plan to consensual claims?	Does state law expressly protect the plan from creditors?
Idaho	Yes [Idaho Code §33-5402]	Yes [Idaho Code §33-5401]	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 is of no force and effect. [Idaho Code § 33-5404(16)]	No
Illinois	Yes <sup>2</sup> [15 ILCS 505/16.5]	Yes [15 ILCS 505/16.5]	No interest in the program may be pledged as security for a loan. [15 ILCS 505/16.5]	No
Indiana	Yes [Burns Ind. Code Ann. §21-9-4-7(2)]	Yes [540 IAC 1-3-1, 1-4-1]	Funds held in the family college savings program... may not be used by an account owner or beneficiary as security for a loan. [Burns Ind. Code Ann. §21-9-7-7]	No
Iowa	Yes [Iowa Code § 12D.9(1)]	Yes [Iowa Code §12.D.1]	A participant shall not be entitled to utilize any interest in the trust as security for a loan. [Iowa Code §12D.6(7)]	No
Kansas	Yes [K.S.A. §75-642(a)]	Yes [K.S.A. §75-642(a)]	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. [K.S.A. §75-646(l)]	No
Kentucky	Yes [KRS §164A.305]	Either the participant or beneficiary must have current or former residence or employment in Kentucky or a family member with current or former residence in Kentucky. [11 KAR 12:010 §1(16), 12:030§§1,2]	No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt. [KRS §164A.350(8)]	Contributions and earnings are exempt from levy of execution, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. [KRS §164A.350(8)]
Louisiana	Yes [La.R.S. 17:3091(C)]	Either the depositor or beneficiary must be a Louisiana resident when the agreement is initiated. [La.R.S. 17:3095(A)(1)]	To extent required by IRC §529. [La.R.S. 17:3091(C)]	The beneficiary's right to the assets of an Education Assistance Account is not subject to collation, execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws or other process of law. [La.R.S. 17:3096(G)]
Maine	Yes [20-A M.R.S. §11483]	Yes [20-A M.R.S. §11477]	A person may not pledge any interest in an account as security for a loan or other debt. [20-A M.R.S. § 11478(5)]	An amount credited to any account is not susceptible to levy, execution, judgment or other operation of law, garnishment or other judicial enforcement and the amount is not an asset or property of either the participant or the beneficiary for purposes of any state insolvency laws. [20-A M.R.S. § 11478(1)]

TABLE 1 / PAGE 3

1	2	3	4	5
State	Has state adopted a college savings plan per IRC Section 529?	Is state's college savings plan open to nonresidents?	To what extent is contributor restricted from exposing plan to consensual claims?	Does state law expressly protect the plan from creditors?
Maryland	Yes <sup>2</sup> [MD Education Code Ann. §18-19A-01]	Yes [MD Education Code Ann. §18-19A-04(a)]	To extent required by IRC §529. [MD Education Code Ann. §18-19A-02]	No
Massachusetts	Yes <sup>2</sup> [Mass. Ann. Laws ch 15D §2(m)]	Yes [Mass. Ann. Laws ch 15D §1(ii)]	A person shall not pledge any interest in an account as security for a loan or other debt. [Mass. Ann. Laws ch 15D §13]	No <sup>3</sup>
Michigan	Yes <sup>2</sup> [MI Public Acts of 2000, Act 161 §3(ii)]	Yes [MI Public Acts of 2000, Act 161 §2]	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 has no force or effect. [MI Public Acts of 2000, Act 161 §9(3)]	No
Minnesota	Yes [Minn. Stat. 136A.243 Subd. 4]	Yes [Minn. Stat. § 136A.242 Subd.3]	To extent required by IRC §529. [Minn. Stat. 136A.243 Subd. 4]	No
Mississippi	Yes <sup>2</sup> [2000 Miss. ALS 473, §2(a)]	Yes [2000 Miss. ALS 473, §3(c),(d)]	To extent required by IRC §529. [2000 Miss. ALS 473, §5(h)]	No
Missouri	Yes [R.S.Mo. §166.415(1)(2)]	Yes [R.S.Mo. §166.410]	An account owner or beneficiary may not use any account or other interest in the savings program or any portion thereof as security for a loan. [15 CSR 50-4.020(6)(F)]	No
Montana	Yes [Mont. Code Anno. §15-62-201]	Yes [Mont. Code Anno. §15-62-103]	A contributor to, account owner of, or designated beneficiary of an account... may not pledge the interest of an account or use an interest in an account as security for a loan. [Mont. Code Anno. §15-62-201(10)]	No
Nebraska	Yes [R.R.S. Neb. §85-1806]	Yes [R.R.S. Neb. §85-1802]	A participant shall not be entitled to utilize any interest in the trust as security for a loan. [R.R.S. Neb. §85-1809(7)]	Notwithstanding any other provision of law, any amount credited to any account is not susceptible to any levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement, and the amount is not an asset or property of either the participant or the beneficiary for the purposes of any state insolvency laws. [R.R.S. Neb. §85-1809(1)]
Nevada	No <sup>2</sup>			
New Hampshire	Yes [RSA 195-H:3]	Yes [RSA 195-H:5]	To extent required by IRC §529. [RSA 195-H:3]	No
New Jersey	Yes [N.J. Stat. §18A:71B-38(h)]	Either the contributor, if an individual, or the designated beneficiary is a New Jersey resident. [N.J.A.C. §9A:10-7.4(a)(4)]	A contributor or a designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect. [N.J. Stat. §18A:71B-41(k)]	No



TABLE 1 / PAGE 4

1	2	3	4	5
<b>State</b>	<b>Has state adopted a college savings plan per IRC Section 529?</b>	<b>Is state's college savings plan open to nonresidents?</b>	<b>To what extent is contributor restricted from exposing plan to consensual claims?</b>	<b>Does state law expressly protect the plan from creditors?</b>
<b>New Mexico</b>	<b>Yes<sup>2</sup></b> [N.M. Stat. Ann. §21-21K-3]	<b>Yes</b> [N.M. Stat. Ann. §21-21K-2]	<b>To extent required by IRC §529</b> [N.M. Stat. Ann. §21-21K-3]	<b>No</b>
<b>New York</b>	<b>Yes</b> [NY CLS Educ §695-c(2)(d)]	<b>Yes</b> [NY CLS Educ §695-a(1)]	<b>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.</b> [NY CLS Educ §695-e(13)]	<b>No</b>
<b>North Carolina</b>	<b>Yes</b> [Master Plan Agreement (MPA) §18 as authorized by N.C. Gen. Stat. §116-209.25]	<b>As of the date of the application, either the applicant identified as the Participant or the child identified as the Beneficiary is a legal resident of the State of North Carolina.</b> [MPA §3]	<b>The participant shall not assign, sell, transfer or otherwise dispose of any interest or right under the Contract. Neither the Participant nor the Beneficiary may pledge any interest in the College Vision Trust Fund or the Contract as security for a loan.</b> [§12 of the MPA]	<b>No</b>
<b>North Dakota</b>	<b>Yes<sup>4</sup></b> [N.D. Cent. Code §6-09-38]			
<b>Ohio</b>	<b>Yes<sup>2</sup></b> [ORC Ann. 3334.03(A)]	<b>Participant or beneficiary must be a resident</b> [ORC Ann. 3334.09(A)]	<b>Variable college savings program account shall not be used as security or collateral for a loan.</b> [ORC Ann. 3334.15(B)]	<b>Variable college savings program account shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other process of law.</b> [ORC Ann. 3334.15(A)]
<b>Oklahoma</b>	<b>Yes</b> [70 Okl. St. §3970.5(4)]	<b>Yes</b> [70 Okl. St. §3970.3]	<b>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 is of no force and effect.</b> [70 Okl. St. §3970.7(P)]	<b>No</b>
<b>Oregon</b>	<b>Yes</b> [ORS § 348.853(1)]	<b>At the time of the initial contribution, either the account owner or designated beneficiary must be a resident of Oregon.</b> [ORS § 348.857(1)]	<b>An account and any interest in an account may not be assignable or pledged or otherwise used to secure or obtain a loan or other advancement.</b> [ORS § 348.863]	<b>No</b>
<b>Pennsylvania</b>	<b>Yes<sup>2</sup></b> [24 P.S. §6901.301(5)(iv)]	<b>The purchaser or the child must live in Pennsylvania when the account is opened.</b> [www.patap.org]	<b>A tuition account or any legal interest therein shall not...be used as security for a loan.</b> [24 P.S. §6901.309(2)(A)]	<b>A tuition account or any legal interest therein shall not be subject to attachment, levy or execution by any creditor of a purchaser or beneficiary.</b> [24 P.S. §6901.309(2)(A)]
<b>Rhode Island</b>	<b>Yes</b> [R.I. Gen. Laws §16-57-6.7]	<b>Yes</b> [R.I. Gen. Laws §16-57-3]	<b>As required by the Internal Revenue Code, no investment earnings or portion thereof may be used as security for a loan.<sup>5</sup></b> [R.I. Gen. Laws §16-57-6.2(1)(b)]	<b>No</b>
<b>South Carolina</b>	<b>No<sup>2</sup></b>			

TABLE 1 / PAGE 5

1	2	3	4	5
State	Has state adopted a college savings plan per IRC Section 529?	Is state's college savings plan open to nonresidents?	To what extent is contributor restricted from exposing plan to consensual claims?	Does state law expressly protect the plan from creditors?
South Dakota	No			
Tennessee	Yes <sup>2</sup> [Tenn. Comp. R. & Regs. 1700-5-2-.01]	Yes [Tenn. Code Ann. §49-7-802]	To extent required by IRC §529. [Tenn. Comp. R. & Regs. 1700-5-2-.01]	All property, cash and assets of the funds... shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court. [Tenn. Code Ann. §49-7-822]
Texas	No <sup>2</sup>			
Utah	Yes [Utah Code Ann. §53B-8b-103(4)(j)]	Yes [U.A.C. R765-685-4.1, 5.1]	Funds held by the Utah Educational Savings Plan Trust may not be used... as security for a loan. [U.A.C. R765-685-15.1]	No
Vermont	Yes [16 V.S.A. §2875 (d)]	At the time of enrollment, either the account owner or the beneficiary must live in Vermont. [www.vsac.org]	To extent required by IRC §529 [16 V.S.A. §2875 (d)]	No
Virginia	Yes <sup>2</sup> [Va. Code Ann. §23-38.75]	Yes [Va. Code Ann. §23-38.75]	No contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge. [Va. Code Ann. §23-38.81(F)]	Money in the Plan shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor or beneficiary. [Va. Code Ann. §23-38.81(E)]
Washington	No <sup>2</sup>			
West Virginia	Yes <sup>2,4</sup> [W.Va. Code §18-30-7]			
Wisconsin	Yes [Wis. Stat. §14.64(2)(b)]	Yes [Wis. Stat. § 14.64(1)(a)]	No interest in a college savings account may be pledged as security for a loan. [Wis. Stat. § 14.64(7)(b)]	A beneficiary's right to qualified withdrawals under this section is not subject to garnishment, attachment, execution or other process of law. [Wis. Stat. § 14.64(7)(a)]
Wyoming	Yes [Wyo. Stat. § 21-16-809]	Yes [Wyo. Stat. § 21-16-818]	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 is of no force and effect. [Wyo. Stat. §21-16-815(p)]	No

**Notes on Table**

1 The reader is cautioned that the law of each state is idiosyncratic and is often ambiguous or incomplete. Moreover, the states are frequently modifying the rules governing their plans. Hence, an independent review of all up-to-date law of the jurisdiction should be undertaken before advising on, or committing funds to, a particular plan.

2 State has adopted a tuition credit plan.

3 The following legislation was proposed in July, 2000: "The right or interest of any Participant or Designated Beneficiary in a qualified state tuition program in accordance with Section 529 of the Code or of any other Trust, shall be exempt from the operation of any law relating to insolvency and shall not be attached or taken on execution or other process to satisfy any debt or liability of such person."

4 State is currently promulgating rules for these savings plans.

5 The Internal Revenue Code restriction on pledging applies to any interest in the program, not merely the investment earnings. IRC Section 529(b)(6).