

SESSION OF 2002

SUPPLEMENTAL NOTE ON SENATE BILL NO. 403

As Amended by House Committee of the Whole

Brief *

SB 403 amends provisions of the law which establish the postsecondary education savings program, commonly known as "Learning Quest," and procedures regarding protection against claims on retirement plan distributions under the Code of Civil Procedure. Changes in law are summarized below:

Learning Quest

- ! Commencing January 1, 2002, any person (not just the account owner) may make contributions to a family postsecondary education savings account.
- ! An account owner, subject to applicable federal laws and rules and regulations of the State Treasurer, may direct the investment of contributions to an account or the interest thereon.
- ! The minimum amount of time that an account must be open before a qualified withdrawal can be made is changed from two years to one year.
- ! The current penalty for a nonqualified withdrawal from an account, an amount equal to 10 percent of the portion of the withdrawal constituting earnings as determined under the federal law, is eliminated. (A 2001 federal law imposes a 10 percent federal tax penalty for such a withdrawal. This change prevents a double penalty.)

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.accesskansas.org/legislature/>

! If the designated beneficiary of an account is a lineal descendant of the account owner, all of the money in the account is exempt from creditor claims on the account owner or designated beneficiary, except that:

" amounts contributed within a one-year period preceding the date of filing of a bankruptcy petition or execution of judgment for such claims against the account owner are not exempt, and

" amounts exceeding \$5,000 contributed between one and two years preceding the date of filing of a bankruptcy petition or preceding an execution on judgment for such claims against the account owner are not exempt.

This applies to proceedings filed January 1, 2002, or later or before January 1, 2002, if the action is pending or on appeal after January 1, 2002.

! The requirement that the program manager perform due diligence regarding nonqualified withdrawals is deleted. This responsibility shifts to the account owner.

! Changes made by the amendments become effective with respect to transactions after January 1, 2002, and the bill becomes effective on publication in the *Kansas Register*.

Code of Civil Procedure – Generally

! The exemption from the subpoena process regarding records of a debtor's participation in a retirement plan is eliminated.

Background

SB 403 was recommended by the Legislative Educational Planning Committee pursuant to its review of the matter during the 2001 Interim. Changes in the bill, as introduced, except for the amendment in the Code of Civil Procedure, were proposed by the State Treasurer, who administers the Learning Quest program, in order to conform it to recent changes in the federal laws and, as suggested by American Century

Investments, the Learning Quest program manager, to make it more attractive to investors. Most of the amendments adopted by the Senate Education Committee also were recommended by the State Treasurer and by American Century Investments. A Committee amendment imposed a one-year limitation for a qualified withdrawal instead of the initial proposal to eliminate what currently is a two-year limitation.

The Kansas Bankers Association expressed opposition to the initial amendments directed at protecting postsecondary education savings accounts from creditors. However, the Kansas Bankers Association and American Century Investments reached a compromise on this matter which was adopted by the Committee.

The Senate Committee of the Whole added amendments proposed by Senator Haley to establish a new program in the Treasurer's Office called the "Family Development Account Program" under which low income families could establish savings accounts for money to be used for educational costs, job training expenses, or to purchase or make improvements to a primary residence.

The House Committee on Higher Education deleted the Senate floor amendments that pertain to the Family Development Account Program from the bill and added an amendment to the Learning Quest Program that was requested by the State Treasurer's Office in order to make it clear that withdrawals made in the first 12 months after an account is opened are non-qualified and are subject to the recapture of any tax deduction previously taken by a Kansas taxpayer on a state tax return.

The House Committee of the Whole amendment was technical in nature.

According to a fiscal note prepared by the Division of the Budget, passage of SB 403 would not affect state revenues or incur additional operating expenses for the State Treasurer's Office.