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February 12, 2025

Kansas Senate Committee on Judiciary  
Senator Kelly Warren, Chair

RE: 2025 SB 237: Child support; Requiring the court to consider the value of retirement accounts if a person loses income for certain reasons and eliminating the exemption of pension and retirement moneys from claims to fulfill child support obligations.

Hearing Date: February 14, 2025

**TESTIMONY OF RONALD W. NELSON**  
**NEUTRAL TESTIMONY ON SB237**

Senator Warren and Members of the Committee:

I am a family law attorney in Johnson County. I have practiced family law in Johnson County and surrounding areas for over 30 years. My practice is focused on helping clients work their way through complex family law matters, including divorce, determination of parentage, child custody, and child support matters in which parenting time and third-party visitation and child support are primary issues. I represent both mothers and fathers in and out of court trying to help my clients through one of the most difficult and emotionally trying times of their lives. I'm involved in many cases in which the establishment, modification, and collection of child support were major issues and where complex issues regarding each of those matters arose.

For more than 25 years, I have also worked with various organizations and legislative committees on ways to improve the statutory law in all areas of family law,

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including child support. I write and teach frequently about family law practice and procedures, both on a local and state-wide level, but also nationally.

The bill before the committee seeks to change a number of perceived problems in Kansas law regarding child support and child support collection.

Regarding the collection of child support, the bill proposes amending two existing statutes: KSA 23-3002 (in section 1) and KSA 60-2308 (in section 3).

Section 1 seeks to amend KSA 23-3002 addresses the collection of child support from a retirement plan by adding a subparagraph (b) allowing for the collection of ongoing child support [i]f a parent experiences a loss of income or termination from employment” for certain reasons.

Section 3 seeks to amend KSA 60-2308 – the Kansas Exemptions statute – to provide that retirement accounts and funds are not exemption from the collection of child support in addition to not being exempt from claims dividing the account under a qualified domestic relations order (which is the typical way of dividing retirement accounts in a divorce proceeding.

Clients I represent have, in the past, had problems with collecting long overdue child support from the obligor parent. In some situations, the obligor parent has intentionally frustrated the recipient parent’s attempts to collect past due child support by pushing more money into their retirement accounts and supporting their ongoing lifestyle by receiving cash payments or having a self-owned business entity cover person bills so that the recipient parent had a difficult and frustrating time collecting that past due support. It would greatly help recipient parents to be able to obtain payment for past due child support from retirement accounts with some kind of exception from the Kansas Exemption statute. However, the language of this bill goes too far. Any exception to the Exemption should be limited to those situations in which child support obligations are significantly overdue and should not open the Exemption to all claims for child support payments.

My suggestion is that the Exemption statute allow for collection from retirement accounts but only when child support arrearages reach a certain arrearage amount or preferably a specified number of months that support is in arrears (e.g. 6 months), balancing the state’s exemptions from collection with a person’s duty to support their children.

But one of the additional difficulties families face in Kansas courts – in fact, throughout the United States – is that those families will often have their cases heard

by judges without any specialized knowledge, training, or experience in areas that effect families going through separation and emotional trauma. Too often, families end up in front of a judge who, as a lawyer, focused her or his practice on an area of special interest at that time – intending to provide that expertise to hearing and deciding cases involving issues on that area when becoming a judge. That doesn't usually happen. Instead, judges are usually assigned to general dockets in which that judge hears criminal and civil cases, misdemeanor and felony crimes, business disputes, disputes between neighbors, contract disputes and breaches, collection on debts, evictions and foreclosures, automobile accidents, product liability claims, and many other kinds and types of matters that usually deal with litigants dealing with arms-length transactions in which they probably never previously had any contact or after which they won't have to again interact.

But family law cases are different. Family law involves litigants who have often had long and deeply intimate connections with one another. Although many cases – upwards of 80% – are resolved by the parties without having to involve a judge in deciding disputes, many others involve extremely complex, detailed issues that may require special expertise, knowledge, experience, and awareness that most trial court judges don't have (and frankly don't want to have to deal). Many lawyers will talk about how they never wanted to deal with family law cases – referring them out to lawyers who focus on family law practice – because of the high emotion, high conflict, detailed interactions, and complex law that is specific to family law. And these lawyers are the pool from which trial court judges are drawn.

The sections providing for collection of child support from retirement accounts have other problems.

Proposed section 1, adding a section (b)(2)(B) to KSA 23-3002 proposes that

“Claims for child support against an individual retirement plan account described in subsection (a)(2) shall: . . . (B) not be subject to early withdrawal penalties if used for child support payments. But the “early withdrawal penalties” referenced are prescribed by federal law in the US Tax Code. (26 U.S. Code § 72) State law cannot supersede federal law and cannot provide exceptions from taxation provided by the federal tax code.

Proposed section 1, adding a section (a)(2) to KSA 23-3002 proposes that

In certain situations, “the court shall” “take into consideration and shall order the use of the total value of any individual retirement plan that is qualified [under

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specified sections of the federal internal revenue code].” But an “individual retirement account” is not the same as any of the various “qualified” accounts referenced (an IRA is *not* a “qualified” account under the Internal Revenue Code). Further, the provision gives no direction to *how* the total value of a retirement account is to be considered. Child support is based on *income*, not holdings. In the situations referenced in the proposed section, the attributed income from loss of ongoing employment or license is already regularly considered by the courts under existing child support guidelines. Also, “considerations” for what is to be included by the court for determination of child support should be included in the statute addressed to that issue (KSA 20-165) *not* in the statute that provides the procedural way in which child support is to be requested.

Section 2 of the bill seeks to amend KSA 23-3005 to exclude from the definition of “material change in circumstance” various factors, including loss of income resulting from “criminal conduct”, loss of a professional license, and voluntary unemployment. But these items are already addressed in the child support guidelines – but with more nuanced language and direction to trial courts than can ever been included in a statute. While obviously well intentioned including these items in statute introduces many potential problems in application: what “criminal conduct?” What severity of criminal conduct? Conduct with or without conviction?

It is better to leave these nuanced issues to the Supreme Court and its Child Support Guidelines Committee charged with reviewing and revising the child support guidelines on a regular basis rather than locking Kansas law into a simple view of a very complex issue.



Ronald W. Nelson