

SENATE BILL No. 237

By Committee on Judiciary

2-6

1 AN ACT concerning family law; relating to child support obligations;  
2 requiring the court to consider the value of retirement accounts when  
3 determining support orders; prohibiting modification of a support order  
4 for ~~criminal conduct~~, professional misconduct or voluntary  
5 underemployment; eliminating the exemption and retirement moneys  
6 from claims to fulfill child support obligations; amending K.S.A. 23-  
7 3002 and 23-3005 and K.S.A. 2024 Supp. 60-2308 and repealing the  
8 existing sections.  
9

10 WHEREAS, The provisions of this act shall be known as the support  
11 compliance and accountability for responsible support act (SCARS).

12 Now, therefore:

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

14 Section 1. K.S.A. 23-3002 is hereby amended to read as follows: 23-  
15 3002. (a) In determining the amount to be paid for child support, the court  
16 shall:

17 (1) Follow the Kansas child support guidelines adopted by the  
18 supreme court pursuant to K.S.A. 20-165, and amendments thereto; and

19 (2) *take into consideration and shall order the use of the total value*  
20 *of any individual retirement plan account that is qualified under sections*  
21 *401(a), 401(k), 403(a), 403(b), 408, 408A or 409 of the federal internal*  
22 *revenue code of 1986 if the person has experienced a loss of income or*  
23 *termination from employment due to ~~criminal conduct~~, loss, revocation,*  
24 *suspension or surrender of a professional license because of professional*  
25 *misconduct or voluntary underemployment as described in K.S.A. 23-*  
26 *3005(a)(2), and amendments thereto.*

27 (b) (1) *If a parent **accumulates a child support arrearage and***  
28 *experiences a loss of income or termination from employment due to*  
29 *~~criminal conduct~~, loss, revocation, suspension or surrender of a*  
30 *professional license because of professional misconduct or voluntary*  
31 *underemployment as described in K.S.A. 23-3005(a)(2), and amendments*  
32 *thereto, the court shall, **upon the occurrence of a distributable event as***  
33 ***defined by the terms of the qualified plan,** order the use of individual*  
34 *retirement plan accounts described in subsection (a)(2) to ~~maintain the~~*

1 ~~existing child support obligation~~ **pay the arrearage with a one-time lump-**  
 2 **sum distribution until:**

3 (A) All funds in such accounts are exhausted; or

4 (B) the parent establishes other means to satisfy the child support  
 5 obligations.

6 (2) Claims for child support against an individual retirement plan  
 7 account described in subsection (a)(2) shall:

8 (A) ~~Take priority over all other claims;~~

9 ~~(B) not be subject to early withdrawal penalties if used for child-~~  
 10 ~~support payments~~ **Not require a plan to make any distributions that are**  
 11 **not otherwise authorized by the terms of the plan;**

12 **(B) be subject to early withdrawal penalties and taxable income as**  
 13 **a distribution; and**

14 (C) be executed through direct payment from the retirement account  
 15 through the Kansas payment center.

16 (c) Any person who files a motion requesting a child support order or  
 17 modification order shall include in such filing a completed domestic  
 18 relations affidavit and proposed child support worksheet.

19 Sec. 2. K.S.A. 23-3005 is hereby amended to read as follows: 23-  
 20 3005. (a) (1) Subject to the provisions of K.S.A. 23-36,207, and  
 21 amendments thereto, the court may modify any prior child support order,  
 22 including any order issued in a title IV-D case, within three years of the  
 23 date of the original order or a modification order, when a material change  
 24 in circumstances is shown, irrespective of the present domicile of the child  
 25 or the parents. If more than three years has passed since the date of the  
 26 original order or modification order, a material change in circumstance  
 27 need not be shown.

28 (2) As used in this section, "material change in circumstance" shall  
 29 not include a loss of income or termination from employment due to:

30 (A) ~~Criminal conduct;~~

31 ~~(B) Loss, revocation, suspension or surrender of a professional~~  
 32 ~~license because of professional misconduct; or~~

33 ~~(C) (B) voluntary underemployment.~~

34 (b) The court may make a modification of child support retroactive to  
 35 the first day of the month following the filing of the motion to modify. Any  
 36 increase in support ordered effective prior to the date the court's judgment  
 37 is filed shall not become a lien on real property pursuant to K.S.A. 60-  
 38 2202, and amendments thereto, until the date of the order.

39 Sec. 3. K.S.A. 2024 Supp. 60-2308 is hereby amended to read as  
 40 follows: 60-2308. (a) Money received by any debtor as pensioner of the  
 41 United States within three months ~~next~~ immediately preceding the issuing  
 42 of an execution, ~~or~~ attachment, or garnishment process, ~~cannot~~ shall not be  
 43 applied to the payment of the debts of such pensioner ~~when~~ if it appears by

1 the affidavit of the debtor or otherwise that such pension money is  
2 necessary for the maintenance of the debtor's support or a family support  
3 wholly or in part by the pension money. The filing of the affidavit by the  
4 debtor, or making proof as provided in this section, shall be prima facie  
5 evidence of the necessity of such pension money for such support. It shall  
6 be the duty of the court ~~in which~~ *where* such proceeding is pending to  
7 release all moneys held by such attachment or garnishment process,  
8 immediately upon the filing of such affidavit; or the making of such proof.

9 (b) Except as provided in subsection (c), any money or other assets  
10 payable to a participant or beneficiary from, or any interest of any  
11 participant or beneficiary in, a retirement plan ~~which~~ *that* is qualified  
12 under sections 401(a), 403(a), 403(b), 408, 408A or 409 of the federal  
13 internal revenue code of 1986, and amendments thereto, shall be exempt  
14 from any and all claims of creditors of the beneficiary or participant. Any  
15 such plan shall be conclusively presumed to be a spendthrift trust under  
16 these statutes and the common law of the state.

17 (c) ~~Any~~ *retirement* plan or arrangement described in subsection (b), *a*  
18 ~~retirement~~ *retirement* plan that is qualified under section 401(k) of the  
19 *federal internal revenue code of 1986, an individual retirement account*  
20 *and any similar retirement instruments, including contributions and*  
21 *amounts within such instruments* shall not be exempt from the claims of an  
22 alternate payee under a qualified domestic relations order *or a child*  
23 *support order issued pursuant to article 30 of chapter 23 of the Kansas*  
24 *Statutes Annotated, and amendments thereto.* ~~However,~~ The interest of any  
25 and all alternate payees under a qualified domestic relations order shall be  
26 exempt from any and all claims of any creditor, other than the Kansas  
27 department for children and families, of the alternate payee. As used in this  
28 subsection, ~~the terms~~ "alternate payee" and "qualified domestic relations  
29 order" have the meaning ascribed to them in section 414(p) of the federal  
30 internal revenue code of 1986, and amendments thereto.

31 (d) The provisions of subsections (b) and (c) shall apply to any  
32 proceeding ~~which~~ *that*:

33 (1) Is filed on or after July 1, 1986; or

34 (2) was filed on or after January 1, 1986, and is pending or on appeal  
35 July 1, 1986.

36 (e) Money held by the central unit for collection and disbursement of  
37 support payments designated pursuant to K.S.A. 39-7,135, and  
38 amendments thereto, the Kansas department for children and families, any  
39 clerk of a district court or any district court trustee in connection with a  
40 court order for the support of any person, whether the money is identified  
41 as child support, spousal support, alimony or maintenance, shall be exempt  
42 from execution, attachment or garnishment process.

43 (f) (1) The provisions of this subsection shall apply to any proceeding

1 ~~which that:~~

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

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

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

11 (3) The provisions of paragraph (2) ~~of this subsection~~ shall not apply  
12 to *claims of any creditor of an account owner, as to amounts contributed*  
13 *within a one-year period preceding:*

14 (A) ~~Claims of any creditor of an account owner, as to amounts~~  
15 ~~contributed within a one-year period preceding~~ The date of the filing of a  
16 bankruptcy petition under 11 U.S.C. § 101 et seq.; or

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

20 (4) The provisions of paragraph (2) ~~of this subsection~~ shall not apply  
21 to *claims of any creditor of an account owner, as to amounts exceeding*  
22 *\$5,000 contributed within a period of time that is more than one year but*  
23 *less than two years preceding:*

24 (A) ~~Claims of any creditor of an account owner, as to amounts~~  
25 ~~exceeding \$5,000 contributed within a period of time which is more than~~  
26 ~~one year but less than two years preceding~~ The date of the filing of a  
27 bankruptcy petition under 11 U.S.C. § 101 et seq.; or

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

32 Sec. 4. K.S.A. 23-3002 and 23-3005 and K.S.A. 2024 Supp. 60-2308  
33 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the Kansas register.