

HOUSE BILL No. 2393

By Committee on Appropriations

3-11

1 AN ACT concerning setoff against debtors; relating to support debt;
2 amending K.S.A. 2018 Supp. 75-6202, 75-6204 and 75-6217 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2018 Supp. 75-6202 is hereby amended to read as
7 follows: 75-6202. As used in article 62 of chapter 75 of the Kansas
8 Statutes Annotated, and amendments thereto:

9 (a) "Debtor" means any person who:

10 (1) Owes a debt to the state of Kansas or any state agency or any
11 municipality;

12 (2) ~~owes support to an individual, or an agency of another state, who~~
13 ~~is receiving assistance in collecting that support under K.S.A. 39-756 or~~
14 ~~K.S.A. 2018 Supp. 20-378, and amendments thereto, or under part D of~~
15 ~~title IV of the federal social security act, 42 U.S.C. § 651 et seq., as~~
16 ~~amended is a support debtor;~~ or

17 (3) owes a debt to a foreign state agency.

18 (b) "Debt" means:

19 (1) Any liquidated sum due and owing to the state of Kansas, or any
20 state agency, municipality or foreign state agency which has accrued
21 through contract, subrogation, tort, operation of law, or any other legal
22 theory regardless of whether there is an outstanding judgment for that sum.
23 A debt shall not include special assessments except when the owner of the
24 property assessed petitioned for the improvement and any successor in
25 interest of such owner of property;

26 (2) ~~any amount of support due and owing an individual, or an agency~~
27 ~~of another state, who is receiving assistance in collecting that support~~
28 ~~under K.S.A. 39-756 or K.S.A. 2018 Supp. 20-378, and amendments~~
29 ~~thereto, or under part D of title IV of the federal social security act, 42~~
30 ~~U.S.C. § 651 et seq., as amended, which amount shall be considered a debt~~
31 ~~due and owing the district court trustee or the Kansas department for~~
32 ~~children and families for the purposes of this act~~ *support debt*; or

33 (3) any assessment of court costs, fines, fees, moneys expended by
34 the state in providing counsel and other defense services to indigent
35 defendants or other charges which a district court judgment has ordered to
36 be paid to the court and which remain unpaid in whole or in part, and

1 includes any interest or penalties on such unpaid amounts as provided for
2 in the judgment or by law. Such amount also includes the cost of collection
3 when the collection services of a contracting agent are utilized.

4 (c) "Refund" means any amount of income tax refund due to any
5 person as a result of an overpayment of tax, and for this purpose, a refund
6 due to a husband and wife resulting from a joint return shall be considered
7 to be separately owned by each individual in the proportion of each such
8 spouse's contribution to income, as the term "contribution to income" is
9 defined by rules and regulations of the secretary of revenue.

10 (d) "Net proceeds collected" means gross proceeds collected through
11 final setoff against a debtor's earnings, refund or other payment due from
12 the state or any state agency minus any collection assistance fee charged
13 by the director of accounts and reports of the department of administration.

14 (e) "State agency" means any state office, officer, department, board,
15 commission, institution, bureau, agency or authority or any division or unit
16 thereof and any judicial district of this state or the clerk or clerks thereof.
17 "State agency" also shall include any: (1) District court utilizing collection
18 services pursuant to K.S.A. 75-719, and amendments thereto, to collect
19 debts owed to such court; and (2) contracting agent, as defined in K.S.A.
20 75-719, and amendments thereto, with which a district court contracts to
21 collect debts owed to such court. Such contracting agent may directly
22 establish a debt setoff account with the director for the sole purpose of
23 collecting debts owed to courts.

24 (f) "Person" means an individual, proprietorship, partnership, limited
25 partnership, association, trust, estate, business trust, corporation, other
26 entity or a governmental agency, unit or subdivision.

27 (g) "Director" means the director of accounts and reports of the
28 department of administration.

29 (h) "Municipality" means any municipality as defined by K.S.A. 75-
30 1117, and amendments thereto, or any community mental health center
31 organized pursuant to the provisions of K.S.A. 19-4001 et seq., and
32 amendments thereto, and licensed pursuant to K.S.A. 2018 Supp. 39-2001
33 et seq., and amendments thereto, or any mental health clinic organized
34 pursuant to the provisions of K.S.A. 65-211 et seq., and amendments
35 thereto, and licensed pursuant to K.S.A. 2018 Supp. 39-2001 et seq., and
36 amendments thereto.

37 (i) "Payor agency" means any state agency which holds money for, or
38 owes money to, a debtor.

39 (j) "Foreign state or foreign state agency" means the states of
40 Colorado, Missouri, Nebraska or Oklahoma or any agency of such states
41 which has entered into a reciprocal agreement pursuant to K.S.A. 75-6215,
42 and amendments thereto.

43 (k) "Facility owner licensee" shall have the same meaning as the term

1 is defined in K.S.A. 74-8802, and amendments thereto.

2 (l) "Racetrack gaming facility manager" shall have the same meaning
3 as that term is defined in K.S.A. 74-8702, and amendments thereto.

4 (m) "Lottery gaming facility manager" shall have the same meaning
5 as that term is defined in K.S.A. 74-8702, and amendments thereto.

6 (n) "Prize" shall have the same meaning as that term is defined in
7 K.S.A. 74-8702, and amendments thereto, and any winnings from
8 parimutuel wagering as provided by the Kansas parimutuel racing act,
9 K.S.A. 74-8801 et seq., and amendments thereto.

10 (o) *"Support debt" means any amount of support due and owing an*
11 *individual, or an agency of another state, who is receiving assistance in*
12 *collecting that support under K.S.A. 39-756, and amendments thereto, or*
13 *K.S.A. 2018 Supp. 20-378, and amendments thereto, or under part D of*
14 *title IV of the federal social security act, 42 U.S.C. § 651 et seq., as*
15 *amended, which amount shall be considered a debt due and owing the*
16 *district court trustee or the Kansas department for children and families*
17 *for the purposes of this act.*

18 (p) *"Support debtor" means any person who owes support to an*
19 *individual, or an agency of another state, who is receiving assistance in*
20 *collecting that support under K.S.A. 39-756, and amendments thereto, or*
21 *K.S.A. 2018 Supp. 20-378, and amendments thereto, or under part D of*
22 *title IV of the federal social security act, 42 U.S.C. § 651 et seq., as*
23 *amended.*

24 Sec. 2. K.S.A. 2018 Supp. 75-6204 is hereby amended to read as
25 follows: 75-6204. (a) Subject to the limitations provided in this act, if a
26 debtor fails to pay a debt or fails to pay to the state of Kansas or any state
27 agency, foreign state agency, municipality or the federal department of the
28 treasury an amount owed, the director may setoff such amount and a
29 reasonable collection assistance fee determined in accordance with K.S.A.
30 75-6210, and amendments thereto, against any money held for, or any
31 money owed to, such:

32 (1) Debtor by the state; or any state agency; or

33 (2) *support debtor by the lottery gaming facility manager, racetrack*
34 *gaming facility manager or facility owner licensee, to the extent the debt is*
35 *a support debt.*

36 (b) The director may enter into an agreement with a municipality for
37 participation in the setoff program for the purpose of assisting in the
38 collection of a debt. The director shall include in any such agreement a
39 provision requiring the municipality to certify that the municipality has
40 made at least three attempts to collect a debt prior to submitting such debt
41 to setoff pursuant to this act.

42 (c) The director shall enter into an agreement with a lottery gaming
43 facility manager, racetrack gaming facility manager or facility owner

1 licensee for participation in the setoff program for the purpose of assisting
2 in the collection of a *support* debt. The director shall include in any such
3 agreement a provision agreeing to defend, indemnify and hold harmless a
4 lottery gaming facility manager, racetrack gaming facility manager or
5 facility owner licensee with regard to all claims, demands, suits, actions,
6 damages, judgments, costs, charges and expenses, including attorney fees,
7 that may be brought or asserted against a lottery gaming facility manager,
8 racetrack gaming facility manager or facility owner licensee and that arise
9 from the performance of an agreement to facilitate the collection of
10 *support* debts by a lottery gaming facility manager, racetrack gaming
11 facility manager or facility owner licensee.

12 (d) (1) Except as provided in subsection ~~(e)~~ (d)(2), the director shall
13 add the cost of collection and the debt for a total amount subject to setoff
14 against a debtor.

15 (2) Any debts due and owing to an individual, the state of Kansas or
16 an agency of another state that are being enforced by the Kansas
17 department for children and families under part D of title IV of the federal
18 social security act, 42 U.S.C. § 651 et seq., as amended, shall not have the
19 cost of collection added to the debt owed and subject to setoff. Such cost
20 of collection shall be paid by the Kansas department for children and
21 families.

22 Sec. 3. K.S.A. 2018 Supp. 75-6217 is hereby amended to read as
23 follows: 75-6217. (a) Prior to any lottery gaming facility manager,
24 racetrack gaming facility manager or facility owner licensee paying on
25 behalf of the state any moneys requiring the completion of an internal
26 revenue service form W-2G, the lottery gaming facility manager, racetrack
27 gaming facility manager or facility owner licensee shall cause the person
28 winning the prize to be matched against the ~~state~~ *support* debtor files
29 maintained by the director of accounts and reports as prescribed under
30 K.S.A. 75-6201 et seq., and amendments thereto. If such person is listed in
31 the ~~state~~ *support* debtor files, the prize shall be withheld by the lottery
32 gaming facility manager, racetrack gaming facility manager or facility
33 owner licensee to the extent of such person's *support* debt as set forth in
34 the ~~state~~ *support* debtor files.

35 (b) The lottery gaming facility manager, racetrack gaming facility
36 manager or facility owner licensee shall not be subject to any civil,
37 criminal or administrative liability for any actions taken pursuant to this
38 section, unless such actions are intentional, malicious or wanton by such
39 lottery gaming facility manager, racetrack gaming facility manager or
40 facility owner licensee or employees or agents thereof. The state shall
41 indemnify the lottery gaming facility manager, racetrack gaming facility
42 manager or facility owner licensee for any and all expenses, losses,
43 damages and attorney fees that arise directly or indirectly from the

1 performance of activities related to this section. For the purposes of the
2 fair debt collection practices act, and any other federal or state law, the
3 lottery gaming facility manager, racetrack gaming facility manager or
4 facility owner licensee shall have all of the protections of the state under
5 the Kansas tort claims act, K.S.A. 75-6101 et seq., and amendments
6 thereto. The sole remedy at law for persons who claim prizes were
7 wrongfully withheld pursuant to this section shall be to submit an appeal
8 to the department of administration pursuant to K.S.A. 75-6201 et seq.,
9 and amendments thereto.

10 (c) Moneys withheld, based on the ~~state~~ *support* debtor files, shall be
11 remitted to the state treasurer in accordance with K.S.A. 75-4215, and
12 amendments thereto. The state treasurer shall deposit the entire amount in
13 the state treasury and credit it to the department of administration's setoff
14 clearing fund.

15 (d) Nothing in this section shall apply to Native American tribal
16 gaming facilities.

17 (e) This section shall be part of and supplemental to the state debt
18 setoff program.

19 Sec. 4. K.S.A. 2018 Supp. 75-6202, 75-6204 and 75-6217 are hereby
20 repealed.

21 Sec. 5. This act shall take effect and be in force from and after its
22 publication in the statute book.