



KANSAS BAR
ASSOCIATION

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Nancy Schmidt Roush
On Behalf of the Kansas Bar Association

RE: SB 36 – Amending K.S.A. 60-2308

DATE: February 2, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Nancy Schmidt Roush and I appear on behalf of the Kansas Bar Association in support of SB 36 which modifies K.S.A. 60-2308.

The Kansas exemption from creditors for IRAs and qualified retirement plans under K.S.A. 60-2308 has been in existence for a number of years. The revisions made by SB 36 are intended to update the statute in a manner consistent with the intent of the legislature in enacting the original exemption, as well as the expectation of and reliance by the general public regarding what is exempt. The revisions should benefit the citizens of Kansas by providing clarity and avoiding issues of interpretation that can lead to litigation and unintended results.

SB 36 clarifies that the status of the debtor as it relates to the IRA or qualified retirement plan can be as owner (such as the contributor to an IRA), participant (such as someone participating in an employer plan), or as a beneficiary (such as the beneficiary of an inherited IRA after the participant's death). The protection of an inherited IRA under similar state exemptions has been the subject of recent litigation in bankruptcy courts around the country. The protection provided by K.S.A. 60-2308 (as originally enacted and clarified in this amendment) follows the only appellate decision on this matter, *In re Nessa*, 2010 Bankr. Lexis 931 (B.A.P. 8th Cir. Apr. 9, 2010), which upheld the protection of a similar state statute from the creditors of the beneficiary of an inherited IRA.

SB 36 also adds references to additional relevant sections under the Internal Revenue Code - §457(b) regarding qualified deferred compensation plans for state and local governments and tax exempt entities, and §501(a) regarding tax exempt organizations.

On behalf of the Kansas Bar Association, I thank you for the opportunity to appear before the committee in support of SB 36.

About the Kansas Bar Association:

Senate Judiciary

2-9-11
Attachment 1

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org