

## SENATE BILL No. 36

By Committee on Judiciary

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1 AN ACT concerning civil procedure; relating to exemption from creditors  
2 for certain retirement plans; amending K.S.A. 60-2308 and repealing  
3 the existing section.

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

6 Section 1. K.S.A. 60-2308 is hereby amended to read as follows: 60-  
7 2308. (a) Money received by any debtor as pensioner of the United States  
8 within three months next preceding the issuing of an execution, or  
9 attachment, or garnishment process, cannot be applied to the payment of  
10 the debts of such pensioner when it appears by the affidavit of the debtor  
11 or otherwise that such pension money is necessary for the maintenance of  
12 the debtor's support or a family support wholly or in part by the pension  
13 money. The filing of the affidavit by the debtor, or making proof as  
14 provided in this section, shall be *prima facie* evidence of the necessity of  
15 such pension money for such support. It shall be the duty of the court in  
16 which such proceeding is pending to release all moneys held by such  
17 attachment or garnishment process, immediately upon the filing of such  
18 affidavit, or the making of such proof.

19 (b) Except as provided in subsection (c), any money or other assets  
20 payable to a ~~participant or~~ beneficiary *or participant* from, or any interest  
21 of any ~~owner~~, participant or beneficiary in, ~~a~~ *an individual retirement*  
22 *account or retirement plan* which is qualified under, *or referred to in*,  
23 sections 401(a), 403(a), 403(b), 408, 408A ~~or~~, 409, 457(b) or 501(a)  
24 of the federal internal revenue code of 1986 ~~and amendments thereto shall~~  
25 ~~be exempt~~, *including any such money or other assets payable to, or*  
26 *interest in, any subsequent beneficiary who was not the original owner*  
27 *of, or participant in, such individual retirement account or qualified*  
28 *retirement plan, including but not limited to an inherited individual*  
29 *retirement account under section 408(d)(3)(C) or 402(c)(11) of the*  
30 *federal internal revenue code, shall be exempt* from any and all claims of  
31 creditors of ~~the beneficiary or any such owner~~, participant: *and*  
32 *beneficiary*. Any such *individual retirement account or retirement plan*  
33 shall be conclusively presumed to be a spendthrift trust under these  
34 statutes and ~~the~~ common law of the state.

35 (c) Any plan or arrangement described in subsection (b) shall not be  
36 exempt from the claims of an alternate payee under a qualified domestic

1 relations order. However, the interest of any and all alternate payees  
2 under a qualified domestic relations order shall be exempt from any and  
3 all claims of any creditor, other than the state department of social and  
4 rehabilitation services, of the alternate payee. As used in this subsection,  
5 the terms "alternate payee" and "qualified domestic relations order" have  
6 the meaning ascribed to them in section 414(p) of the federal internal  
7 revenue code ~~of 1986 and amendments thereto.~~

8 (d) The provisions of subsections (b) and (c) shall apply to any  
9 proceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on  
10 or after January 1, 1986, and is pending or on appeal July 1, 1986.

11 (e) Money held by the central unit for collection and disbursement  
12 of support payments designated pursuant to K.S.A. 23-4,118, and  
13 amendments thereto, the state department of social and rehabilitation  
14 services, any clerk of a district court or any district court trustee in  
15 connection with a court order for the support of any person, whether the  
16 money is identified as child support, spousal support, alimony or  
17 maintenance, shall be exempt from execution, attachment or garnishment  
18 process.

19 (f) (1) The provisions of this subsection shall apply to any  
20 proceeding which:

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

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

24 (2) Except as provided by paragraphs (3) and (4) of this subsection,  
25 if the designated beneficiary of a family postsecondary education savings  
26 account established pursuant to K.S.A. ~~2005~~ 2010 Supp. 75-640 et seq.,  
27 and amendments thereto, is a lineal descendant of the account owner, all  
28 moneys in the account shall be exempt from any claims of creditors of the  
29 account owner or designated beneficiary.

30 (3) The provisions of paragraph (2) of this subsection shall not apply  
31 to:

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

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

38 (4) The provisions of paragraph (2) of this subsection shall not apply  
39 to:

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

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

5 (g) *For the purposes of this section, "federal internal revenue code"*  
6 *means the federal internal revenue code of 1986, as amended.*

7 Sec. 2. K.S.A. 60-2308 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its  
9 publication in the statute book.

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