

## SENATE BILL No. 237

By Committee on Judiciary

2-6

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

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

Now, therefore:

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

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

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

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

(b) (1) If a parent experiences a loss of income or termination from employment due to criminal conduct, loss, revocation, suspension or surrender of a professional license because of professional misconduct or voluntary underemployment as described in K.S.A. 23-3005(a)(2), and amendments thereto, the court shall order the use of individual retirement plan accounts described in subsection (a)(2) to maintain the existing child support obligation until:

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

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

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

3       (A) *Take priority over all other claims;*

4       (B) *not be subject to early withdrawal penalties if used for child*  
5 *support payments; and*

6       (C) *be executed through direct payment from the retirement account*  
7 *through the Kansas payment center.*

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

11       Sec. 2. K.S.A. 23-3005 is hereby amended to read as follows: 23-  
12 3005. (a) (1) Subject to the provisions of K.S.A. 23-36,207, and  
13 amendments thereto, the court may modify any prior child support order,  
14 including any order issued in a title IV-D case, within three years of the  
15 date of the original order or a modification order, when a material change  
16 in circumstances is shown, irrespective of the present domicile of the child  
17 or the parents. If more than three years has passed since the date of the  
18 original order or modification order, a material change in circumstance  
19 need not be shown.

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

22       (A) *Criminal conduct;*

23       (B) *loss, revocation, suspension or surrender of a professional*  
24 *license because of professional misconduct; or*

25       (C) *voluntary underemployment.*

26       (b) The court may make a modification of child support retroactive to  
27 the first day of the month following the filing of the motion to modify. Any  
28 increase in support ordered effective prior to the date the court's judgment  
29 is filed shall not become a lien on real property pursuant to K.S.A. 60-  
30 2202, and amendments thereto, until the date of the order.

31       Sec. 3. K.S.A. 2024 Supp. 60-2308 is hereby amended to read as  
32 follows: 60-2308. (a) Money received by any debtor as pensioner of the  
33 United States within three months ~~next~~ immediately preceding the issuing  
34 of an execution, ~~or~~ attachment, or garnishment process, ~~cannot~~ *shall not* be  
35 applied to the payment of the debts of such pensioner ~~when~~ *if* it appears by  
36 the affidavit of the debtor or otherwise that such pension money is  
37 necessary for the maintenance of the debtor's support or a family support  
38 wholly or in part by the pension money. The filing of the affidavit by the  
39 debtor, or making proof as provided in this section, shall be prima facie  
40 evidence of the necessity of such pension money for such support. It shall  
41 be the duty of the court ~~in which~~ *where* such proceeding is pending to  
42 release all moneys held by such attachment or garnishment process,  
43 immediately upon the filing of such affidavit; or the making of such proof.

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

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

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

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

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

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

35 (f) (1) The provisions of this subsection shall apply to any proceeding  
36 ~~which~~ *that*:

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

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

40 (2) Except as provided by paragraphs (3) and (4) ~~of this subsection~~, if  
41 the designated beneficiary of a family postsecondary education savings  
42 account established pursuant to K.S.A. 75-640 et seq., and amendments  
43 thereto, is a lineal descendant of the account owner, all moneys in the

1 account shall be exempt from any claims of creditors of the account owner  
2 or designated beneficiary.

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

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

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

12 (4) The provisions of paragraph (2) ~~of this subsection~~ shall not apply  
13 to *claims of any creditor of an account owner, as to amounts exceeding*  
14 *\$5,000 contributed within a period of time that is more than one year but*  
15 *less than two years preceding*:

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

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

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

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