

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

- 1       (A) *All funds in such accounts are exhausted; or*  
2       (B) *the parent establishes other means to satisfy the child support*  
3 *obligations.*
- 4       (2) *Claims for child support against an individual retirement plan*  
5 *account described in subsection (a)(2) shall:*
- 6       (A) ~~*Take priority over all other claims;*~~  
7       (B) ~~*not be subject to early withdrawal penalties if used for child-*~~  
8 ~~*support payments*~~ ***Not require a plan to make any distributions that are***  
9 ***not otherwise authorized by the terms of the plan;***
- 10       (B) ***be subject to early withdrawal penalties and taxable income as***  
11 ***a distribution; and***
- 12       (C) *be executed through direct payment from the retirement account*  
13 *through the Kansas payment center.*
- 14       (c) Any person who files a motion requesting a child support order or  
15 modification order shall include in such filing a completed domestic  
16 relations affidavit and proposed child support worksheet.
- 17       Sec. 2. K.S.A. 23-3005 is hereby amended to read as follows: 23-  
18 3005. (a) (1) Subject to the provisions of K.S.A. 23-36,207, and  
19 amendments thereto, the court may modify any prior child support order,  
20 including any order issued in a title IV-D case, within three years of the  
21 date of the original order or a modification order, when a material change  
22 in circumstances is shown, irrespective of the present domicile of the child  
23 or the parents. If more than three years has passed since the date of the  
24 original order or modification order, a material change in circumstance  
25 need not be shown.
- 26       (2) *As used in this section, "material change in circumstance" shall*  
27 *not include a loss of income or termination from employment due to:*
- 28       (A) *Criminal conduct;*  
29       (B) *loss, revocation, suspension or surrender of a professional*  
30 *license because of professional misconduct; or*  
31       (C) *voluntary underemployment.*
- 32       (b) The court may make a modification of child support retroactive to  
33 the first day of the month following the filing of the motion to modify. Any  
34 increase in support ordered effective prior to the date the court's judgment  
35 is filed shall not become a lien on real property pursuant to K.S.A. 60-  
36 2202, and amendments thereto, until the date of the order.
- 37       Sec. 3. K.S.A. 2024 Supp. 60-2308 is hereby amended to read as  
38 follows: 60-2308. (a) Money received by any debtor as pensioner of the  
39 United States within three months ~~next~~ immediately preceding the issuing  
40 of an execution, ~~or~~ attachment, or garnishment process, ~~cannot~~ ***shall not be***  
41 ***applied to the payment of the debts of such pensioner*** ~~when~~ ***if it appears by***  
42 ***the affidavit of the debtor or otherwise that such pension money is***  
43 ***necessary for the maintenance of the debtor's support or a family support***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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