

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2465**

As Agreed to April 4, 2024

Brief*

HB 2465 would enact the Adoption Savings Account Act (Act), establish modifications to the Kansas adjusted gross income (KAGI) of an individual for contributions to an adoption savings account (account), and amend the adoption tax credit; and enact the Pregnancy Resource Act that would provide a tax credit for certain contributions to certain pregnancy resource centers and residential maternity facilities, and enact a sales tax exemption for pregnancy resource centers and residential maternity facilities.

Adoption Savings Accounts

The bill would allow an individual, on and after July 1, 2025, to open an account with a financial institution and designate the entirety of the account as an account that would be used to pay or reimburse a designated beneficiary's eligible expenses for the adoption of a child. The bill would allow an individual to be the account holder of multiple accounts or jointly own an account, provided the individual files a joint income tax return.

The bill would require the account holder, by April 15 of the year after the taxable year in which the account holder established the account, to designate a prospective adoptive parent as the beneficiary of the account. The bill would not prohibit an account holder from designating the account holder as the designated beneficiary. An account holder would be allowed to change the designated beneficiary at any time, but no account could have more than one designated beneficiary at one time. An individual could be the designated beneficiary of more than one account if the accounts are held by separate account holders, but no account holder would be authorized to designate the same designated beneficiary on multiple accounts held by the same account holder, except when opening certificates of deposit.

The bill would apply the following limits to an account established pursuant to the Act:

- Maximum contribution to an account in any tax year:
 - \$6,000 for an individual; and
 - \$12,000 for a married couple filing a joint return;

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- Maximum amount of all contributions to an account in all tax years:
 - \$48,000 for an individual; and
 - \$96,000 for a married couple filing a joint return; and
- The maximum total allowable amount in an account would be \$100,000.

The bill would allow moneys to remain in an account for an unlimited duration without the interest or income being subject to recapture or penalty. Further, the bill would prohibit the account holder from using moneys in an account to pay expenses for administering the account, except for a service fee that may be deducted by a financial institution. In addition, the account holder would be responsible for maintaining documentation for the account and for eligible expenses related to the designated beneficiary's purchase or construction of a primary residence.

Account Moneys

The bill would allow the moneys in an account to be used for the following:

- Eligible expenses related to a designated beneficiary's adoption of a child, which would include:
 - Reasonable fees for legal and other professional services rendered in connection with an adoption or placement for an adoption;
 - Reasonable fees of a licensed child-placing agency;
 - Actual and necessary expenses incidental to the adoption or placement proceeding;
 - Actual medical expenses of the mother attributable to the pregnancy or birth;
 - Actual medical expenses of the child; and
 - Reasonable living expenses of the mother that are incurred during or as a result of the pregnancy;
- Eligible expenses that would have qualified pursuant to this section, in cases in which the adoption was not completed;
- Transfers to another newly created account;
- Investment in certificates of deposit opened and designated as adoption savings accounts; and
- Payment of service fees assessed by the financial institution.

The bill would subject moneys withdrawn from an account to recapture by the Secretary of Revenue (Secretary) in the tax year in which they were withdrawn if:

- The time of withdrawal is less than a year since the first deposit in the account; or
- The moneys are used for any purpose other than the expenses or transactions authorized pursuant to the uses outlined in this section.

Moneys subject to recapture would be an amount equal to the amount withdrawn from an account and would be added to the KAGI of the account holder or of the designated beneficiary, if the account holder is deceased. If any moneys are subject to recapture, the account holder would be required to pay a penalty in the following amounts:

- If the withdrawal of moneys occurred 10 or fewer years after the first deposit of the account, 5.0 percent of the amount subject to recapture; or
- If the withdrawal of moneys occurred more than 10 years after the first deposit in the account, 10.0 percent of the amount subject to recapture.

The penalties would not apply if the withdrawn moneys are from an account in which the designated beneficiary is deceased and the account holder did not designate a new designated beneficiary during the same tax year.

Further, if the account holder or account holders are deceased and the account does not have a surviving transfer- on-death beneficiary, the moneys in the account resulting from contributions or income earned from assets in the account would be subject to recapture in the tax year of the death or deaths, but no penalty would be assessed.

Reports

The bill would require the Secretary to establish forms for an account holder to annually report information about any accounts held by the account holder. An account holder would be required to annually file relevant supporting information with the account holder's state income tax return.

The bill would require the Secretary to adopt rules and regulations necessary to administer the Act prior to July 1, 2025.

Financial Institutions

The bill would state financial institutions would not be required to:

- Designate an account as an adoption savings account or designate the beneficiaries of an account in the financial institution's account contracts or systems in any way;
- Track the use of moneys withdrawn from an account; or
- Report any information to the Department of Revenue (Department) or any other governmental agency that is not otherwise required to be reported by law.

The bill would state financial institutions would not be responsible or liable for:

- Determining or ensuring an account holder is eligible for a KAGI modification;
- Determining or ensuring moneys in the account are used for eligible expenses; or
- Reporting or remitting taxes or penalties related to the use of account moneys.

State Treasurer Marketing

The bill would grant the State Treasurer non-exclusive authority to market the program to account holders and financial institutions throughout the state and report on such marketing in the Office of the State Treasurer's annual report.

Modifications to Kansas Adjusted Gross Income of an Individual

The bill would add, for purposes of determining the KAGI of an individual, to the federal adjusted gross income for all taxable years beginning after December 31, 2024:

- The amount of any contributions to, or earnings from, an account if:
 - Distributions from the account were not used to pay for expenses or transactions authorized by the bill; or
 - Were not held for the minimum length of time pursuant to the bill; and
- Contributions to, or earnings from, the account, including any amount resulting from the account holder not designating a surviving transfer-on-death beneficiary pursuant to the bill.

The bill would also create a subtraction modification from the federal adjusted gross income for all taxable years beginning after December 31, 2024, in the following amounts:

- The amount contributed to an adoption savings account in an amount not to exceed \$6,000 for an individual or \$12,000 for a married couple filing a joint return; or
- Amounts received as income earned from assets in an account.

Adoption Tax Credit

The bill would increase, beginning in tax year 2024, the adoption tax credit to 100 percent of the federal adoption tax credit.

[*Note:* Current law provides for a tax credit amount of 25 percent of the federal adoption tax credit and additional amounts of 25 percent if the child adopted was a Kansas resident prior to the adoption and 25 percent if the child was a Kansas resident prior to the adoption and is a child with special needs, as defined in federal law.]

Pregnancy Resource Act

The bill would create the Pregnancy Resource Act, which would create a tax credit for contributions to nonprofit pregnancy centers or residential maternity centers exempt from federal income tax pursuant to Section 501(c)(3) of the federal Internal Revenue Code, provided that such centers:

- Maintain a dedicated phone number for clients;

- Maintain a primary physical office, clinic, or residential home in Kansas for a minimum of 20 hours a week, excluding state holidays;
- Offer services free of charge to clients for the express purpose of providing assistance to women in carrying pregnancies to term, preventing abortion, and promoting healthy childbirth; and
- Utilize healthcare providers, as licensed, registered, or certified by the Board of Healing Arts, Board of Nursing, or Behavioral Sciences Regulatory Board in the performance of any available medical procedures.

The bill would allow the credit to be claimed against income, privilege, or premium tax liability beginning in tax year 2024, in an amount equal to 70 percent of voluntary contributions made to such centers, and carried forward for up to five future tax years following the tax year in which the eligible contribution was made. The bill would prohibit contributions from being payment for services rendered.

The aggregate amount of credits claimed would be limited to \$10.0 million per tax year, with no more than \$5.0 million per tax year in credits claimed for contributions to any single organization.

Administration of Credits

Taxpayers claiming the credit would be required to provide the Department with the amount of the contribution and the name of the organization to which it was made. Prior to claiming credits, taxpayers would be required to make application on forms provided by the Department certifying the dollar amount of the contribution made or to be made within the calendar year.

The Department would be required to allocate credits within 30 days after the receipt of an application. If the full credit amount cannot be allocated due to the annual aggregate limit having been reached, the Department would be required to notify applicants within 30 days of any amount to be allocated. The bill would require prospective contributions to be made within 90 days of the allocation of a credit, which would otherwise be canceled and reallocated.

Eligible charitable organizations would be required to provide the Department with a written certification, made under penalty of perjury, of eligibility in regard to the requirements specified by the bill, along with any other information the Department would require to administer its provisions. The Department would be required to review each such certification and make a determination of eligibility, and to make publicly available a list of eligible organizations. The Department would be authorized to periodically request recertification from organizations.

Credits claimed by S-corporations, partnerships, limited liability companies, or other pass-through entities would be distributed proportionally among shareholders, partners, or members according to ownership or as mutually agreed to by the parties.

Sales Tax Exemption for Pregnancy Resource Centers and Residential Maternity Facilities

The bill would create a sales tax exemption for purchases by a pregnancy resource center or residential maternity facility, which would be defined as a Kansas nonprofit organization exempt from the federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code that:

- Maintains a dedicated phone number for clients;
- Maintains a primary physical office, clinic, or residential home in Kansas for a minimum of 20 hours a week, excluding state holidays;
- Offers services free of charge to clients for the express purpose of providing assistance to women in carrying pregnancies to term, preventing abortion, and promoting healthy childbirth; and
- Utilizes healthcare providers, as licensed, registered, or certified by the Board of Healing Arts, Board of Nursing, or Behavioral Sciences Regulatory Board in the performance of any available medical procedures.

Conference Committee Action

The second Conference Committee agreed to remove the contents of HB 2465 and to insert the provisions of SB 498, as amended by the Senate Committee on Assessment and Taxation, and HB 2757, as amended by the House Committee on Taxation and further amended the bill to make the adoption tax credit nonrefundable and make clarifying and technical changes.

Background

The second Conference Committee report includes the provisions of HB 2757, as amended by the House Committee on Taxation and SB 498, as amended by the Senate Committee on Assessment and Taxation with the amendments described above. The background for each of these bills is provided below.

HB 2757 (Adoption Savings Account)

HB 2757 was introduced by the House Committee on Taxation at the request of Representative Estes.

House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by Representative Estes, Senator Blasi, the State Treasurer, and two private citizens. The proponents generally stated the bill would create a way to assist with expenses associated with adoption and incentivize financial preparation for adoption.

Written-only proponent testimony was provided by representatives of the Kansas Bankers Association, Kansas Catholic Conference, and Kansas Credit Union Association.

No other testimony was provided.

The House Committee amended the bill to increase dollar amounts for contributions and balances in adoption savings accounts and subtraction modifications; make technical amendments to the provisions related to certificates of deposit; and remove provisions restricting the use of funds in adoption savings accounts to adoptions in Kansas.

SB 498 (Adoption Tax Credit Changes and Pregnancy Resource Act)

SB 498 was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Erickson.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by representatives of Advice and Aid Pregnancy Centers, Kansas Catholic Conference, Kansas Family Voice, Kansans for Life, Lifeline Children's Services, and Wyandotte Pregnancy Clinic. The proponents generally stated the bill would encourage donations that would enable them to more effectively serve their clients.

Written-only proponent testimony was provided by representatives of Kansas City Pregnancy Clinic and Mary's Choices and two private citizens.

Opponent testimony was provided by a representative of Trust Women Foundation. The opponent generally stated state tax incentives for women's health care should be distributed to organizations providing comprehensive care.

Written-only opponent testimony was provided by representatives of Mainstream and Planned Parenthood Great Plains Votes.

No other testimony was provided.

The Senate Committee amended the bill to eliminate a provision that would have created a child tax credit.

Fiscal Information

HB 2757 (Adoption Savings Account)

According to the Department, enactment of HB 2757, as amended, would reduce state receipts by \$320,000 in FY 2026 and \$640,000 in FY 2027 and all future years. The Department also indicates the implementation of the bill would require the Department to hire an additional 1.0 FTE (full-time equivalent) position and expend \$161,401 from the State General Fund in FY 2025 to implement and manage the program.

SB 498 (Adoption Tax Credit Changes and Pregnancy Resource Act)

According to the Department, the Pregnancy Resource Act would reduce state receipts by \$10.0 million per year beginning in FY 2025, the changes to the adoption tax credit would reduce state receipts by \$2.7 million in FY 2025, \$5.3 million in FY 2026, and \$8.0 million in FY 2028 and all future years, and the sales tax exemption for pregnancy resource centers and residential maternity facilities would reduce state receipts by approximately \$390,000 in FY 2025 and \$430,000 in FY 2026 and all future years.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Taxation; income tax; credit; subtraction modification; sales tax; exemption; adoption; Adoption Savings Account Act; Pregnancy Resource Act

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