

*[As Amended by Senate Committee of the Whole]*

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*As Amended by Senate Committee*

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*Session of 2004*

## **SENATE BILL No. 303**

By Legislative Educational Planning Committee

1-9

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12 AN ACT concerning the family postsecondary savings program; relating  
13 to accounts therein; relating to income tax exemptions; amending  
14 K.S.A. 2003 Supp. 75-646 and 79-32,117 and repealing the existing  
15 sections.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2003 Supp. 75-646 is hereby amended to read as  
19 follows: 75-646. (a) Family postsecondary education savings accounts es-  
20 tablished pursuant to the provisions of K.S.A. 2003 Supp. 75-640 to 75-  
21 648, and amendments thereto shall be governed by the provisions of this  
22 section.

23 (b) A family postsecondary education savings account may be opened  
24 by any person or persons who desire to save money for the payment of  
25 the qualified higher education expenses of the designated beneficiary.  
26 Such persons shall be considered the account owner.

27 (1) An application for such account shall be in the form prescribed  
28 by the state treasurer and contain the following:

29 (A) The name, address and social security number or employer iden-  
30 tification number of the account owner or owners;

31 (B) the designation of a designated beneficiary;

32 (C) the name, address and social security number of the designated  
33 beneficiary;

34 (D) the certification relating to no excess contributions; and

35 (E) such other information as the state treasurer may require.

36 (2) The state treasurer may establish a nominal nonrefundable ap-  
37 plication fee for such application.

38 (c) ~~From and after January 1, 2002,~~ Any person may make contri-  
39 butions to the account after the account is opened.

40 (d) Contributions to accounts may be made only in cash.

41 (e) An account owner may withdraw all or part of the balance from  
42 an account on sixty-days notice or such shorter period as may be author-  
43 ized under rules and regulations governing the program.

1 (f) (1) An account owner may change the designated beneficiary of  
2 an account to an individual who is a member of the family of the prior  
3 designated beneficiary in accordance with procedures established pur-  
4 suant to the provisions of K.S.A. 2003 Supp. 75-640 to 75-648, and  
5 amendments thereto.

6 (2) An account owner may transfer all or a portion of an account to  
7 another family postsecondary education savings account, the designated  
8 beneficiary of which is a member of the family as defined in section 529  
9 of the federal internal revenue code of 1986, as amended.

10 (3) Changes in designated beneficiaries and transfers under this sub-  
11 section shall not be permitted to the extent that they would constitute  
12 excess contributions or unauthorized investment choices.

13 (g) The program shall provide separate accounting for each desig-  
14 nated beneficiary.

15 (h) Subject to the provisions of section 529 of the internal revenue  
16 code of 1986, in effect on January 1, 2002, or later versions as established  
17 in rules and regulations adopted by the treasurer, an account owner of  
18 any account shall be permitted to direct the investment of any contri-  
19 butions to an account or the earnings thereon.

20 (i) Neither an account owner nor a designated beneficiary may use  
21 an interest in an account as security for a loan. Any pledge of an interest  
22 in an account shall be of no force and effect.

23 (j) Except as provided in K.S.A. 2003 Supp. 75-640 through 75-648,  
24 and amendments thereto, or section 529 of the federal internal revenue  
25 code of 1986, as amended, any withdrawal made within one year after an  
26 account has been opened under a qualified tuition program as defined in  
27 section 529 of the federal internal revenue code of 1986, as amended, is  
28 a nonqualified withdrawal.

29 (k) (1) The state treasurer shall adopt rules and regulations to pre-  
30 vent contributions on behalf of a designated beneficiary in excess of an  
31 amount equal to the ~~average amount of the~~ **average amount of the**  
32 ~~qualified higher education expenses that would be incurred for five years~~  
33 ~~of study at institutions of postsecondary education located in the midwest~~  
34 ~~states undergraduate study at the highest-cost institution of postsecondary~~  
35 ~~education that is eligible to participate in the program~~ **institutions of**  
36 **postsecondary education located in the midwest states. The treasurer**  
37 ~~shall determine annually the account-balance limit for each account based~~  
38 ~~upon the year of expected enrollment of the beneficiary.~~ Such amount  
39 shall be determined annually by the state treasurer.

40 (2) Such rules and regulations shall include requirements that any  
41 excess contributions with respect to a designated beneficiary be promptly  
42 withdrawn in a nonqualified withdrawal or transferred to another account.

43 (l) (1) If there is any distribution from an account to any individual

1 or for the benefit of any individual during a calendar year, such distri-  
2 bution shall be reported to the federal internal revenue service and the  
3 account owner or owners, the designated beneficiary, or the distributee  
4 to the extent required by federal law or regulation.

5 (2) Statements shall be provided to each account owner at least once  
6 each year within 60 days after the end of the twelve-month period to  
7 which they relate. The statement shall identify the contributions made  
8 during a preceding twelve-month period, the total contributions made to  
9 the account through the end of the period, the value of the account at  
10 the end of such period, distributions made during such period and any  
11 other information that the state treasurer shall require to be reported to  
12 the account owner.

13 (3) Statements and information relating to accounts shall be prepared  
14 and filed to the extent required by federal and state tax law.

15 (m) (1) A state or local government, or agency or instrumentality  
16 thereof, or organization described in section 501(c)(3) of the federal in-  
17 ternal revenue code of 1986, as amended, may open and become the  
18 account owner of an account to fund scholarships for persons whose iden-  
19 tity will be determined upon disbursement.

20 (2) In the case of any account opened pursuant to provision (1) of  
21 this subsection, the requirement set forth in subsection (b) that a desig-  
22 nated beneficiary be designated when an account is opened shall not  
23 apply and each individual who receives an interest in such account as a  
24 scholarship shall be treated as a designated beneficiary with respect to  
25 such interest.

26 (n) An annual fee may be imposed upon the account owner or owners  
27 for the maintenance of the account.

28 (o) An account owner or designated beneficiary of a Kansas postse-  
29 condary education savings account must be a citizen or resident of the  
30 United States of America.

31 (p) The program shall disclose the following information in writing  
32 to each account owner and prospective account owner of a family postse-  
33 condary education savings account:

34 (1) The terms and conditions for purchasing a family postsecondary  
35 education savings account;

36 (2) any restrictions on the substitution of beneficiaries;

37 (3) the person or entity entitled to terminate the savings agreement;

38 (4) the period of time during which a beneficiary may receive benefits  
39 under the savings agreement;

40 (5) the terms and conditions under which money may be wholly or  
41 partially withdrawn from the program, including, but not limited to, any  
42 reasonable charges and fees that may be imposed for withdrawal;

43 (6) the probable tax consequences associated with contributions to

1 and distributions from accounts; and

2 (7) all other rights and obligations pursuant to savings agreements,  
3 and any other terms, conditions and provisions deemed necessary and  
4 appropriate by the state treasurer.

5 (q) Nothing in K.S.A. 2003 Supp. 75-640 to 75-648, and amendments  
6 thereto, or in any savings agreement entered into pursuant to K.S.A. 2003  
7 Supp. 75-640 to 75-648, and amendments thereto, shall be construed as  
8 a guarantee by the state of Kansas or any institution of postsecondary  
9 education that a beneficiary will be admitted to the institution of postse-  
10 condary education or, upon admission to any institution of postsecondary  
11 education, will be permitted to continue to attend or will receive a degree  
12 from such institution of postsecondary education.

13 (r) ~~The amendments to this section by this act shall apply to any action~~  
14 ~~or transaction taken or occurring from and after January 1, 2002~~ *Moneys*  
15 *in a family postsecondary education savings account shall be exempt from*  
16 *attachment, execution or garnishment as provided by K.S.A. 60-2308, and*  
17 *amendments thereto.*

18 Sec. 2. K.S.A. 2003 Supp. 79-32,117 is hereby amended to read as  
19 follows: 79-32,117. (a) The Kansas adjusted gross income of an individual  
20 means such individual's federal adjusted gross income for the taxable year,  
21 with the modifications specified in this section.

22 (b) There shall be added to federal adjusted gross income:

23 (i) Interest income less any related expenses directly incurred in the  
24 purchase of state or political subdivision obligations, to the extent that  
25 the same is not included in federal adjusted gross income, on obligations  
26 of any state or political subdivision thereof, but to the extent that interest  
27 income on obligations of this state or a political subdivision thereof issued  
28 prior to January 1, 1988, is specifically exempt from income tax under the  
29 laws of this state authorizing the issuance of such obligations, it shall be  
30 excluded from computation of Kansas adjusted gross income whether or  
31 not included in federal adjusted gross income. Interest income on obli-  
32 gations of this state or a political subdivision thereof issued after Decem-  
33 ber 31, 1987, shall be excluded from computation of Kansas adjusted  
34 gross income whether or not included in federal adjusted gross income.

35 (ii) Taxes on or measured by income or fees or payments in lieu of  
36 income taxes imposed by this state or any other taxing jurisdiction to the  
37 extent deductible in determining federal adjusted gross income and not  
38 credited against federal income tax. This paragraph shall not apply to taxes  
39 imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amend-  
40 ments thereto, for privilege tax year 1995, and all such years thereafter.

41 (iii) The federal net operating loss deduction.

42 (iv) Federal income tax refunds received by the taxpayer if the de-  
43 duction of the taxes being refunded resulted in a tax benefit for Kansas

1 income tax purposes during a prior taxable year. Such refunds shall be  
2 included in income in the year actually received regardless of the method  
3 of accounting used by the taxpayer. For purposes hereof, a tax benefit  
4 shall be deemed to have resulted if the amount of the tax had been de-  
5 ducted in determining income subject to a Kansas income tax for a prior  
6 year regardless of the rate of taxation applied in such prior year to the  
7 Kansas taxable income, but only that portion of the refund shall be in-  
8 cluded as bears the same proportion to the total refund received as the  
9 federal taxes deducted in the year to which such refund is attributable  
10 bears to the total federal income taxes paid for such year. For purposes  
11 of the foregoing sentence, federal taxes shall be considered to have been  
12 deducted only to the extent such deduction does not reduce Kansas tax-  
13 able income below zero.

14 (v) The amount of any depreciation deduction or business expense  
15 deduction claimed on the taxpayer's federal income tax return for any  
16 capital expenditure in making any building or facility accessible to the  
17 handicapped, for which expenditure the taxpayer claimed the credit al-  
18 lowed by K.S.A. 79-32,177, and amendments thereto.

19 (vi) Any amount of designated employee contributions picked up by  
20 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,  
21 and amendments to such sections.

22 (vii) The amount of any charitable contribution made to the extent  
23 the same is claimed as the basis for the credit allowed pursuant to K.S.A.  
24 79-32,196, and amendments thereto.

25 (viii) The amount of any costs incurred for improvements to a swine  
26 facility, claimed for deduction in determining federal adjusted gross in-  
27 come, to the extent the same is claimed as the basis for any credit allowed  
28 pursuant to K.S.A. 2003 Supp. 79-32,204 and amendments thereto.

29 (ix) The amount of any ad valorem taxes and assessments paid and  
30 the amount of any costs incurred for habitat management or construction  
31 and maintenance of improvements on real property, claimed for deduc-  
32 tion in determining federal adjusted gross income, to the extent the same  
33 is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203  
34 and amendments thereto.

35 (x) Amounts received as nonqualified withdrawals, as defined by  
36 K.S.A. 2003 Supp. 75-643, and amendments thereto, if, at the time of  
37 contribution to a family postsecondary education savings account, such  
38 amounts were subtracted from the federal adjusted gross income pur-  
39 suant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amend-  
40 ments thereto, or if such amounts are not already included in the federal  
41 adjusted gross income.

42 (c) There shall be subtracted from federal adjusted gross income:

43 (i) Interest or dividend income on obligations or securities of any

1 authority, commission or instrumentality of the United States and its pos-  
2 sessions less any related expenses directly incurred in the purchase of  
3 such obligations or securities, to the extent included in federal adjusted  
4 gross income but exempt from state income taxes under the laws of the  
5 United States.

6 (ii) Any amounts received which are included in federal adjusted  
7 gross income but which are specifically exempt from Kansas income tax-  
8 ation under the laws of the state of Kansas.

9 (iii) The portion of any gain or loss from the sale or other disposition  
10 of property having a higher adjusted basis for Kansas income tax purposes  
11 than for federal income tax purposes on the date such property was sold  
12 or disposed of in a transaction in which gain or loss was recognized for  
13 purposes of federal income tax that does not exceed such difference in  
14 basis, but if a gain is considered a long-term capital gain for federal in-  
15 come tax purposes, the modification shall be limited to that portion of  
16 such gain which is included in federal adjusted gross income.

17 (iv) The amount necessary to prevent the taxation under this act of  
18 any annuity or other amount of income or gain which was properly in-  
19 cluded in income or gain and was taxed under the laws of this state for a  
20 taxable year prior to the effective date of this act, as amended, to the  
21 taxpayer, or to a decedent by reason of whose death the taxpayer acquired  
22 the right to receive the income or gain, or to a trust or estate from which  
23 the taxpayer received the income or gain.

24 (v) The amount of any refund or credit for overpayment of taxes on  
25 or measured by income or fees or payments in lieu of income taxes im-  
26 posed by this state, or any taxing jurisdiction, to the extent included in  
27 gross income for federal income tax purposes.

28 (vi) Accumulation distributions received by a taxpayer as a beneficiary  
29 of a trust to the extent that the same are included in federal adjusted  
30 gross income.

31 (vii) Amounts received as annuities under the federal civil service  
32 retirement system from the civil service retirement and disability fund  
33 and other amounts received as retirement benefits in whatever form  
34 which were earned for being employed by the federal government or for  
35 service in the armed forces of the United States.

36 (viii) Amounts received by retired railroad employees as a supple-  
37 mental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1)  
38 *et seq.*

39 (ix) Amounts received by retired employees of a city and by retired  
40 employees of any board of such city as retirement allowances pursuant to  
41 K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter  
42 ordinance exempting a city from the provisions of K.S.A. 13-14,106, and  
43 amendments thereto.

1 (x) For taxable years beginning after December 31, 1976, the amount  
2 of the federal tentative jobs tax credit disallowance under the provisions  
3 of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978,  
4 the amount of the targeted jobs tax credit and work incentive credit dis-  
5 allowances under 26 U.S.C. 280 C.

6 (xi) For taxable years beginning after December 31, 1986, dividend  
7 income on stock issued by Kansas Venture Capital, Inc.

8 (xii) For taxable years beginning after December 31, 1989, amounts  
9 received by retired employees of a board of public utilities as pension and  
10 retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249  
11 and amendments thereto.

12 (xiii) For taxable years beginning after December 31, 1993, the  
13 amount of income earned on contributions deposited to an individual  
14 development account under K.S.A. 79-32,117h, and amendments thereto.

15 (xiv) For all taxable years commencing after December 31, 1996, that  
16 portion of any income of a bank organized under the laws of this state or  
17 any other state, a national banking association organized under the laws  
18 of the United States, an association organized under the savings and loan  
19 code of this state or any other state, or a federal savings association or-  
20 ganized under the laws of the United States, for which an election as an  
21 S corporation under subchapter S of the federal internal revenue code is  
22 in effect, which accrues to the taxpayer who is a stockholder of such  
23 corporation and which is not distributed to the stockholders as dividends  
24 of the corporation.

25 (xv) For all taxable years beginning after December 31, ~~1999 2003~~  
26 **1999**, amounts not exceeding ~~\$2,000, or \$4,000, or \$8,000~~ **\$2,000 or**  
27 **\$4,000** for a married couple filing a joint return, for each designated  
28 beneficiary which are contributed to a family postsecondary education  
29 savings account established under the Kansas postsecondary education  
30 savings program for the purpose of paying the qualified higher education  
31 expenses of a designated beneficiary at an institution of postsecondary  
32 education. ***For all taxable years beginning after December 31, 2004,***  
33 ***amounts not exceeding \$3,000, or \$6,000 for a married couple filing***  
34 ***a joint return, for each designated beneficiary which are contrib-***  
35 ***uted to a family postsecondary education savings account estab-***  
36 ***lished under the Kansas postsecondary education savings program***  
37 ***for the purpose of paying the qualified higher education expenses***  
38 ***of a designated beneficiary at an institution of postsecondary edu-***  
39 ***cation.*** The terms and phrases used in this paragraph shall have the  
40 meaning respectively ascribed thereto by the provisions of K.S.A. 2003  
41 Supp. 75-643, and amendments thereto, and the provisions of such sec-  
42 tion are hereby incorporated by reference for all purposes thereof.

43 (d) There shall be added to or subtracted from federal adjusted gross

1 income the taxpayer's share, as beneficiary of an estate or trust, of the  
2 Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and  
3 amendments thereto.

4 (e) The amount of modifications required to be made under this sec-  
5 tion by a partner which relates to items of income, gain, loss, deduction  
6 or credit of a partnership shall be determined under K.S.A. 79-32,131,  
7 and amendments thereto, to the extent that such items affect federal  
8 adjusted gross income of the partner.

9 Sec. 3. K.S.A. 2003 Supp. 75-646 and 79-32,117 are hereby repealed.

10 Sec. 4. This act shall take effect and be in force from and after its  
11 publication in the statute book.