

LEGISLATIVE BILL 465

Approved by the Governor June 2, 2005

Introduced by Redfield, 12

AN ACT relating to financial transactions; to amend sections 44-371 and 44-1089, Reissue Revised Statutes of Nebraska, and sections 8-1,131 and 21-1799, Revised Statutes Supplement, 2004; to provide powers relating to health savings accounts; to provide and change provisions relating to exemptions from claims of creditors for medical and health savings accounts, annuity contracts, and certain insurance policies; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 8-1,131, Revised Statutes Supplement, 2004, is amended to read:

8-1,131. (1) All banks chartered under the laws of Nebraska are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the bank or in other banks. If any such retirement plan, within the judgment of the bank, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2) (a) All banks chartered under the laws of Nebraska are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. If any such medical savings account or health savings account, within the judgment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the account holder. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

Sec. 2. Section 21-1799, Revised Statutes Supplement, 2004, is amended to read:

21-1799. (1) All credit unions chartered under the laws of Nebraska shall be qualified to act as a trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962 or under the terms and provisions of section 408(a) of the Internal Revenue Code if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the credit union or other credit unions.

(2) All credit unions chartered under the laws of Nebraska are

qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

(3) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of an education individual retirement account created within the provisions of section 530 of the Internal Revenue Code.

(4) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of a Roth IRA created within the provisions of section 408A of the Internal Revenue Code.

(5) If any such plan, in the judgment of the credit union, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 220, 223, 408(a), 408A, or 530 of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the credit union is subsequently determined not to be such a qualified plan, or subsequently ceases to be such a qualified plan, in whole or in part, the credit union may continue to act as trustee of any deposits which have been made under such plan and to dispose of such deposits in accordance with the directions of the member and beneficiaries thereof.

(6) No credit union, with respect to savings made under this section, shall be required to segregate such savings from other assets of the credit union, but the credit union shall keep appropriate records showing in detail all transactions engaged in pursuant to this section.

Sec. 3. Section 44-371, Reissue Revised Statutes of Nebraska, is amended to read:

44-371. (1) (a) ~~All~~ Except as provided in subdivision (1) (b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (1) (a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) An insurance company shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

~~(b) This subsection shall not apply to an individual's aggregate interests greater than ten thousand dollars on all loan values or cash values of all matured or unmatured life insurance contracts or to all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual. Notwithstanding anything in this subdivision to the contrary, the aggregate exemptions any person may claim under this subdivision and subdivision (2) (b) of section 44-1089 shall not exceed ten thousand dollars.~~

~~(c) No insurance company shall be liable or responsible to any person to determine or ascertain the aggregate total of life insurance policy or annuity contract loan values, cash values, proceeds, or benefits for any policyholder or annuitant.~~

(2) Notwithstanding subsection (1) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No insurance company shall be liable or responsible to any person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Sec. 4. Section 44-1089, Reissue Revised Statutes of Nebraska, is amended to read:

44-1089. (1) No noninsurance benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

(2) (a) ~~All~~ Except as provided in subdivision (2) (b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (2) (a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) A fraternal benefit society shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

~~(b) This subsection shall not apply to an individual's aggregate interests greater than ten thousand dollars on all loan values or cash values of all matured or unmatured life insurance contracts or to all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual. Notwithstanding anything in this subdivision to the contrary, the aggregate exemptions any person may claim under subdivision (1)(b) of section 44-371 and this subdivision shall not exceed ten thousand dollars.~~

~~(c) No fraternal benefit society shall be liable or responsible to any person to determine or ascertain the aggregate total of policy or certificate of life insurance or annuity contract loan values, cash values, proceeds, or benefits for any policy or certificate owner or annuitant.~~

(3) Notwithstanding subsection (2) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No fraternal benefit society shall be liable or responsible to any person to determine or ascertain the

existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Sec. 5. Original sections 44-371 and 44-1089, Reissue Revised Statutes of Nebraska, and sections 8-1,131 and 21-1799, Revised Statutes Supplement, 2004, are repealed.