

CREDITOR PROTECTION FOR 529 SAVINGS ACCOUNTS
 Updated September 14, 2015

Any comments on this table or new developments that should be reflected on the table should be sent to sbart@sidley.com.

<u>State</u>	<u>Statutory Exemption</u>	<u>Limited to State's Own Program</u>	<u>Statute Expressly Specifies Protection from Creditors of</u>			<u>Exemption Inapplicable</u>		<u>Other Limitations</u>	<u>Comments</u>
			<u>Donor</u>	<u>Owner</u>	<u>Beneficiary</u>	<u>Child Support</u>	<u>Divorce</u>		
Alaska	Alaska Stat. §§ 14.40.802; 34.40.110(b)(4)	Y		√	√	√			
Arizona	Ariz. Rev. Stat. § 33-1126(A)(10)	N		√	√			Exemption does not include contributions within two years of bankruptcy.	
Arkansas	A.C.A. § 6-84-110(b)(2)	Y		√	√				
Colorado	C.R.S. 23-3.1-307.4	Y	√	√	√				
Florida	Fla. Stat. § 222.22	N	√	√	√				
Idaho ¹	Idaho Code § 11-604A	Y				√	√		
Illinois ²	15 ILCS 505/16.5 735 ILCS 5/12-1001(j)	Y	√	√	√			Exemption limited to amount of gift tax annual exclusion for contributions during 365-day period prior to filing bankruptcy; same limit applies to contributions made 366-730 days prior to filing bankruptcy.	

¹ *In re McFarland*, No. 04-01623, 2004 WL 4960367 (Bankr. D. Idaho, Sept. 3, 2004) (holding that the statutory exemption for employee benefit plans expressly includes the state's 529 college savings accounts).

² *PNC Bank, N.A. v. Dubin*, 2013 U.S. Dist. Lexis 48070 (2013) (permitting non-bankruptcy creditor to enforce judgment against 529 accounts).

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Kansas ³	K.S.A. § 60-2308(f)(2)-(4)	Y		√	√			Beneficiary must be lineal descendant of account owner. No protection for contributions made within one year before bankruptcy petition or judgment for claims. Contributions made between one year and two years prior to bankruptcy petition or judgment for claims only protected up to \$5,000 per account owner.	
Kentucky	Ky. Rev. Stat. § 164A.350	Y		√	√				
Louisiana	La. R.S. 17: 3096G	N	√	√	√			Protection of beneficiary's right to account assets applies only to accounts established under the state's own program.	
Maine	Me. Rev. Stat. Ann. Title 20-A, § 11478	Y		√	√				
Maryland	Md. Education Code Ann. § 18-1913	Y						No protection from the State as a creditor.	
Michigan	M.C.L. § 6023(1)(l)	N							
Nebraska	R.R.S. Neb. § 85-1809	Y		√	√				

³ *In re Werth*, 468 B.R. 412 (Bankr. D. Kan. 2012) (holding that contributions to 529 accounts made within the year preceding the filing of a bankruptcy petition are not exempt).

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Nevada ⁴	N.R.S. § 21.090	Y						Exemption amount may not exceed \$500,000. Exemption is inapplicable if "the money will not be used by any beneficiary to attend a college or university" or the money was deposited after entry of a judgment against the owner.	
New Jersey	N.J. Stat. § 18A:71B-41.1	Y	√		√			Provides exemption for moneys paid into or out of an account for qualified higher education expenses.	
New York	NY CLS CPLR § 5205	Y						Exemption is very limited. See the statute.	
North Carolina	N.C. Gen. Stat. § 1C-1601	N				√	√	Exemption limited to \$25,000. Excludes funds contributed during prior 12 months unless contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions. Exemption is also limited to the extent that the funds are used to fund college for a child of the debtor.	
North Dakota	N.D. Admin. Code 12.5-02-01-06	Y		√	√				
Ohio	ORC 2329.66(A)(10)(c),(e)	N		√	√	√		Exemption does not apply to amounts "deposited for the purpose of evading the payment of any debt."	See ORC 3334.15(A) re Ohio prepaid 529 accounts.
Oklahoma	31 Okl. St. § 1. A. 24	Y							
Oregon	ORS § 348.863(2)	Y		√	√				

⁴ *VFS Financing, Inc. v. Specialty Financing Corp.*, 2014 U.S. Dist. Lexis 100341 (2014) (permitting enforcement of judgment against all funds deposited in 529 account owned by debtor after entry of judgment, including funds contributed by third parties).

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Pennsylvania	24 P.S. § 6901.309.2	Y		√	√				
Rhode Island	R.I. Gen. Laws § 9-26-4(15)	Y				√	√		
South Carolina	S.C. Code Ann. § 59-2-140	Y							Protects "contributions," the "right of a person to a refund of contributions" and "any other right."
South Dakota	S.D. Codified Laws § 13-63-20	Y	√	√	√			No exemption for funds contributed by account owner or contributor within one year of filing bankruptcy petition.	
Tennessee	Tenn. Code Ann. § 49-7-822	N							
Texas	Tex. Prop. Code § 42.0022	N							Protects "a person's right to the assets held in or to receive payments or benefits under."
Virginia	Va. Code Ann. § 23-38.81	Y	√	√	√				
West Virginia	W.Va. Code § 18-30-7(i)	Y		√	√				
Wisconsin ⁵	Wis. Stat. § 16.641	Y			√				

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⁵ *Cirilli v. Bronk (In re Bronk)*, 444 B.R. 902 (Bankr. W.D. Wis. 2011) (holding that Wisconsin's exemption statute protects only the beneficiary's right to qualified withdrawals from a college savings account).