

SENATE BILL No. 176

By Committee on Assessment and Taxation

2-13

1 AN ACT concerning the department of commerce; relating to the
2 disclosure of economic development incentive program data, tax credit
3 programs and certain property tax exemptions; required database;
4 amending K.S.A. 2017 Supp. 75-5133, as amended by section 37 of
5 chapter 89 of the 2018 Session Laws of Kansas, and 79-3234, as
6 amended by section 38 of chapter 89 of the 2018 Session Laws of
7 Kansas, and and repealing the existing sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) As used in this section:

11 (1) "Administering agency" means the state agency or department
12 charged with administering a particular income tax credit program, as set
13 forth by the program's enacting statute or, where no department or agency
14 is set forth, the department of revenue.

15 (2) "Economic development incentive program" means:

16 (A) Any economic development incentive program administered
17 wholly or in part by the secretary of commerce;

18 (B) any tax credit program, except for social and domestic tax credits,
19 regardless of the administering agency;

20 (C) property that has been exempted from ad valorem taxation under
21 the provisions of section 13 of article 11 of the constitution of the state of
22 Kansas; and

23 (D) property that has been purchased, acquired, constructed,
24 reconstructed, improved, equipped, furnished, repaired, enlarged or
25 remodeled with all or any part of the proceeds of revenue bonds issued
26 under the authority of K.S.A. 12-1740 through 12-1749a, and amendments
27 thereto, that is exempt from ad valorem taxation under K.S.A. 79-201a
28 *Second*, and amendments thereto.

29 (3) "Enterprise" means a corporation, limited liability company, S
30 corporation, partnership, registered limited liability partnership,
31 foundation, association, nonprofit entity, sole proprietorship, business trust
32 or other entity engaged in business.

33 (4) "Recipient" means the enterprise that is the original applicant for
34 and that receives proceeds from an economic development incentive
35 program directly from the administering agency.

36 (5) "Social and domestic tax credits" means the adoption credit

1 created pursuant to K.S.A. 79-202a, and amendments thereto, the earned
2 income tax credit created pursuant to K.S.A. 2018 Supp. 79-32,205, and
3 amendments thereto, the food sales tax credit created pursuant to K.S.A.
4 2018 Supp. 79-32,271, and amendments thereto, the child and dependent
5 care tax credit created pursuant to K.S.A. 2018 Supp. 79-32,111c, and
6 amendments thereto, and the homestead property tax refund created
7 pursuant to K.S.A. 79-4501 et seq., and amendments thereto.

8 (6) "Tax credit program" means any credit allowed against the tax
9 imposed by the Kansas income tax act, the premium or privilege fees
10 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
11 privilege tax as measured by net income of financial institutions imposed
12 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
13 amendments thereto.

14 (b) The department of commerce shall collect incentive data from
15 economic development incentive programs that provide more than \$50,000
16 of annual incentives from administering agencies as required by this
17 section. Such data shall be collected from administering agencies and be
18 stored in a database that is available to the public in a digital format. The
19 database shall contain information from multiple years and must be
20 searchable, printable and available to access over the internet either on the
21 department of commerce's website or via a conspicuous link on the front
22 page of the department's website. Information included in the database
23 shall be updated by the department of commerce on an annual basis and
24 such update shall be completed prior to the end of the following fiscal year
25 in which such incentive was earned or distributed.

26 (c) The database required to be created by subsection (b) shall contain
27 the following information or shall contain a link by which the user can
28 access such information:

29 (1) User information for each economic development incentive
30 program, including the:

31 (A) Names and addresses, including county, of recipients receiving
32 benefits from the program and, for sales tax and revenue bonds issued
33 under the STAR bond financing act, K.S.A. 2018 Supp. 12-17,162 et seq.,
34 and amendments thereto, the names of principals and officers for each
35 project developer;

36 (B) annual amount of incentives claimed and distributed to each
37 recipient;

38 (C) qualification criteria for the economic development incentive
39 program, including, if available, qualification criteria specific to the
40 recipient;

41 (D) required benchmarks for continued participation in the economic
42 development incentive program; and

43 (E) years for which the recipient has received benefits under the

- 1 economic development incentive program;
- 2 (2) descriptive information for each economic development program,
3 which shall include:
- 4 (A) A description and history of the program, including its inception
5 date;
- 6 (B) the purpose or goals of the program and the criteria for
7 qualification;
- 8 (C) applications for the program, if any, and relevant resources or
9 contacts;
- 10 (D) the program cost and return on investment, including
11 assumptions used to calculate the return on investment;
- 12 (E) the program compliance rate;
- 13 (F) annual reports, if required by statute; and
- 14 (G) evaluations of the program, if any; and
- 15 (3) annual data, which shall be organized by recipient, county and
16 program and shall include the:
- 17 (A) Total amount of annual incentives from a program claimed by a
18 recipient;
- 19 (B) total amount of incentives received by recipients in each county;
20 and
- 21 (C) total amount of incentives distributed by each program.
- 22 (d) Data collected pursuant to this section must be aggregated and
23 provided by program, recipient and county.
- 24 (e) Information required to be included in the database under
25 subsection (c) shall not be disclosed if such disclosure would violate any
26 federal law or confidentiality provisions of any agreement executed before
27 July 1, 2019, or if, in the discretion of the secretary of commerce, such
28 disclosure would be detrimental to the development of a STAR bond
29 project.
- 30 Sec. 2. K.S.A. 2017 Supp. 75-5133, as amended by section 37 of
31 chapter 89 of the 2018 Session Laws of Kansas, is hereby amended to read
32 as follows: 75-5133. (a) Except as otherwise more specifically provided by
33 law, all information received by the secretary of revenue, the director of
34 taxation or the director of alcoholic beverage control from returns, reports,
35 license applications or registration documents made or filed under the
36 provisions of any law imposing any sales, use or other excise tax
37 administered by the secretary of revenue, the director of taxation, or the
38 director of alcoholic beverage control, or from any investigation conducted
39 under such provisions, shall be confidential, and it shall be unlawful for
40 any officer or employee of the department of revenue to divulge any such
41 information except in accordance with other provisions of law respecting
42 the enforcement and collection of such tax, in accordance with proper
43 judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

1 (b) The secretary of revenue or the secretary's designee may:

2 (1) Publish statistics, so classified as to prevent identification of
3 particular reports or returns and the items thereof;

4 (2) allow the inspection of returns by the attorney general or the
5 attorney general's designee;

6 (3) provide the post auditor access to all such excise tax reports or
7 returns in accordance with and subject to the provisions of K.S.A. 46-
8 1106(e), and amendments thereto;

9 (4) disclose taxpayer information from excise tax returns to persons
10 or entities contracting with the secretary of revenue where the secretary
11 has determined disclosure of such information is essential for completion
12 of the contract and has taken appropriate steps to preserve confidentiality;

13 (5) provide information from returns and reports filed under article 42
14 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
15 to county appraisers as is necessary to ensure proper valuations of
16 property. Information from such returns and reports may also be
17 exchanged with any other state agency administering and collecting
18 conservation or other taxes and fees imposed on or measured by mineral
19 production;

20 (6) provide, upon request by a city or county clerk or treasurer or
21 finance officer of any city or county receiving distributions from a local
22 excise tax, monthly reports identifying each retailer doing business in such
23 city or county or making taxable sales sourced to such city or county,
24 setting forth the tax liability and the amount of such tax remitted by each
25 retailer during the preceding month, and identifying each business location
26 maintained by the retailer and such retailer's sales or use tax registration or
27 account number;

28 (7) provide information from returns and applications for registration
29 filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-
30 3601, and amendments thereto, to a city or county treasurer or clerk or
31 finance officer to explain the basis of statistics contained in reports
32 provided by subsection (b)(6);

33 (8) disclose the following oil and gas production statistics received by
34 the department of revenue in accordance with K.S.A. 79-4216 et seq., and
35 amendments thereto: Volumes of production by well name, well number,
36 operator's name and identification number assigned by the state
37 corporation commission, lease name, leasehold property description,
38 county of production or zone of production, name of purchaser and
39 purchaser's tax identification number assigned by the department of
40 revenue, name of transporter, field code number or lease code, tax period,
41 exempt production volumes by well name or lease, or any combination of
42 this information;

43 (9) release or publish liquor brand registration information provided

1 by suppliers, farm wineries, microdistilleries and microbreweries in
2 accordance with the liquor control act. The information to be released is
3 limited to: Item number, universal numeric code, type status, product
4 description, alcohol percentage, selling units, unit size, unit of
5 measurement, supplier number, supplier name, distributor number and
6 distributor name;

7 (10) release or publish liquor license information provided by liquor
8 licensees, distributors, suppliers, farm wineries, microdistilleries and
9 microbreweries in accordance with the liquor control act. The information
10 to be released is limited to: County name, owner, business name, address,
11 license type, license number, license expiration date and the process agent
12 contact information;

13 (11) release or publish cigarette and tobacco license information
14 obtained from cigarette and tobacco licensees in accordance with the
15 Kansas cigarette and tobacco products act. The information to be released
16 is limited to: County name, owner, business name, address, license type
17 and license number;

18 (12) provide environmental surcharge or solvent fee, or both,
19 information from returns and applications for registration filed pursuant to
20 K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary
21 of health and environment or the secretary's designee for the sole purpose
22 of ensuring that retailers collect the environmental surcharge tax or solvent
23 fee, or both;

24 (13) provide water protection fee information from returns and
25 applications for registration filed pursuant to K.S.A. 82a-954, and
26 amendments thereto, to the secretary of the state board of agriculture or the
27 secretary's designee and the secretary of the Kansas water office or the
28 secretary's designee for the sole purpose of verifying revenues deposited to
29 the state water plan fund;

30 (14) provide to the secretary of commerce copies of applications for
31 project exemption certificates sought by any taxpayer under the enterprise
32 zone sales tax exemption pursuant to K.S.A. 79-3606(cc), and
33 amendments thereto;

34 (15) disclose information received pursuant to the Kansas cigarette
35 and tobacco act and subject to the confidentiality provisions of this act to
36 any criminal justice agency, as defined in K.S.A. 22-4701(c), and
37 amendments thereto, or to any law enforcement officer, as defined in
38 K.S.A.-2017 2018 Supp. 21-5111, and amendments thereto, on behalf of a
39 criminal justice agency, when requested in writing in conjunction with a
40 pending investigation;

41 (16) provide to retailers tax exemption information for the sole
42 purpose of verifying the authenticity of tax exemption numbers issued by
43 the department;

1 (17) provide information concerning remittance by sellers, as defined
2 in K.S.A. ~~2017~~ 2018 Supp. 12-5363, and amendments thereto, of prepaid
3 wireless 911 fees from returns to the local collection point administrator,
4 as defined in K.S.A. ~~2017~~ 2018 Supp. 12-5363, and amendments thereto,
5 for purposes of verifying seller compliance with collection and remittance
6 of such fees;

7 (18) release or publish charitable gaming information obtained in
8 charitable gaming licensee and registration applications and renewals in
9 accordance with the Kansas charitable gaming act, K.S.A. ~~2017~~ 2018
10 Supp. 75-5171 et seq., and amendments thereto. The information to be
11 released is limited to: The name, address, phone number, license
12 registration number and email address of the organization, distributor or of
13 premises; ~~and~~

14 (19) provide to the attorney general confidential information for
15 purposes of determining compliance with or enforcing K.S.A. 50-6a01 et
16 seq., and amendments thereto, the master settlement agreement referred to
17 therein and all agreements regarding disputes under the master settlement
18 agreement. The secretary and the attorney general may share the
19 information specified under this subsection with any of the following:

20 (A) Federal, state or local agencies for the purposes of enforcement
21 of corresponding laws of other states; and

22 (B) a court, arbitrator, data clearinghouse or similar entity for the
23 purpose of assessing compliance with or making calculations required by
24 the master settlement agreement or agreements regarding disputes under
25 the master settlement agreement, and with counsel for the parties or expert
26 witnesses in any such proceeding, if the information otherwise remains
27 confidential; *and*

28 (20) *disclose taxpayer information that is received from income tax*
29 *returns to the department of commerce for the purpose of including such*
30 *information in the database required by section 1, and amendments*
31 *thereto.*

32 (c) Any person receiving any information under the provisions of
33 subsection (b) shall be subject to the confidentiality provisions of
34 subsection (a) and to the penalty provisions of subsection (d).

35 (d) Any violation of this section shall be a class A, nonperson
36 misdemeanor, and if the offender is an officer or employee of this state,
37 such officer or employee shall be dismissed from office. Reports of
38 violations of this paragraph shall be investigated by the attorney general.
39 The district attorney or county attorney and the attorney general shall have
40 authority to prosecute any violation of this section if the offender is a city
41 or county clerk or treasurer or finance officer of a city or county.

42 Sec. 3. K.S.A. 2017 Supp. 79-3234, as amended by section 38 of
43 chapter 89 of the 2018 Session Laws of Kansas, is hereby amended to read

1 as follows: 79-3234. (a) All reports and returns required by this act shall be
2 preserved for three years and thereafter until the director orders them to be
3 destroyed.

4 (b) Except in accordance with proper judicial order, or as provided in
5 subsection (c) or in K.S.A. 17-7511, ~~K.S.A. 46-1106(e), K.S.A. 46-1114,~~
6 ~~or K.S.A. 79-32,153a,~~ and amendments thereto, it shall be unlawful for the
7 secretary, the director, any deputy, agent, clerk or other officer, employee
8 or former employee of the department of revenue or any other state officer
9 or employee or former state officer or employee to divulge, or to make
10 known in any way, the amount of income or any particulars set forth or
11 disclosed in any report, return, federal return or federal return information
12 required under this act; and it shall be unlawful for the secretary, the
13 director, any deputy, agent, clerk or other officer or employee engaged in
14 the administration of this act to engage in the business or profession of tax
15 accounting or to accept employment, with or without consideration, from
16 any person, firm or corporation for the purpose, directly or indirectly, of
17 preparing tax returns or reports required by the laws of the state of Kansas,
18 by any other state or by the United States government, or to accept any
19 employment for the purpose of advising, preparing material or data, or the
20 auditing of books or records to be used in an effort to defeat or cancel any
21 tax or part thereof that has been assessed by the state of Kansas, any other
22 state or by the United States government.

23 (c) The secretary or the secretary's designee may:

24 (1) Publish statistics, so classified as to prevent the identification of
25 particular reports or returns and the items thereof;

26 (2) allow the inspection of returns by the attorney general or other
27 legal representatives of the state;

28 (3) provide the post auditor access to all income tax reports or returns
29 in accordance with and subject to the provisions of K.S.A. 46-1106(e) or
30 ~~K.S.A. 46-1114,~~ and amendments thereto;

31 (4) disclose taxpayer information from income tax returns to persons
32 or entities contracting with the secretary of revenue where the secretary
33 has determined disclosure of such information is essential for completion
34 of the contract and has taken appropriate steps to preserve confidentiality;

35 (5) disclose to the secretary of commerce the following: (A) Specific
36 taxpayer information related to financial information previously submitted
37 by the taxpayer to the secretary of commerce concerning or relevant to any
38 income tax credits, for purposes of verification of such information or
39 evaluating the effectiveness of any tax credit or economic incentive
40 program administered by the secretary of commerce; (B) the amount of
41 payroll withholding taxes an employer is retaining pursuant to K.S.A.
42 ~~2017 Supp. 74-50,212,~~ and amendments thereto; (C) information received
43 from businesses completing the form required by K.S.A. ~~2017 Supp. 74-~~

1 50,217, and amendments thereto; and (D) findings related to a compliance
2 audit conducted by the department of revenue upon the request of the
3 secretary of commerce pursuant to K.S.A. ~~2017 Supp.~~ 74-50,215, and
4 amendments thereto;

5 (6) disclose income tax returns to the state gaming agency to be used
6 solely for the purpose of determining qualifications of licensees of and
7 applicants for licensure in tribal gaming. Any information received by the
8 state gaming agency shall be confidential and shall not be disclosed except
9 to the executive director, employees of the state gaming agency and
10 members and employees of the tribal gaming commission;

11 (7) disclose the taxpayer's name, last known address and residency
12 status to the Kansas department of wildlife, parks and tourism to be used
13 solely in its license fraud investigations;

14 (8) disclose the name, residence address, employer or Kansas
15 adjusted gross income of a taxpayer who may have a duty of support in a
16 title IV-D case to the secretary of the Kansas department for children and
17 families for use solely in administrative or judicial proceedings to
18 establish, modify or enforce such support obligation in a title IV-D case. In
19 addition to any other limits on use, such use shall be allowed only where
20 subject to a protective order which prohibits disclosure outside of the title
21 IV-D proceeding. As used in this section, "title IV-D case" means a case
22 being administered pursuant to part D of title IV of the federal social
23 security act, 42 U.S.C. § 651 et seq., and amendments thereto. Any person
24 receiving any information under the provisions of this subsection shall be
25 subject to the confidentiality provisions of subsection (b) and to the
26 penalty provisions of subsection (e);

27 (9) permit the commissioner of internal revenue of the United States,
28 or the proper official of any state imposing an income tax, or the
29 authorized representative of either, to inspect the income tax returns made
30 under this act and the secretary of revenue may make available or furnish
31 to the taxing officials of any other state or the commissioner of internal
32 revenue of the United States or other taxing officials of the federal
33 government, or their authorized representatives, information contained in
34 income tax reports or returns or any audit thereof or the report of any
35 investigation made with respect thereto, filed pursuant to the income tax
36 laws, as the secretary may consider proper, but such information shall not
37 be used for any other purpose than that of the administration of tax laws of
38 such state, the state of Kansas or of the United States;

39 (10) communicate to the executive director of the Kansas lottery
40 information as to whether a person, partnership or corporation is current in
41 the filing of all applicable tax returns and in the payment of all taxes,
42 interest and penalties to the state of Kansas, excluding items under formal
43 appeal, for the purpose of determining whether such person, partnership or

1 corporation is eligible to be selected as a lottery retailer;

2 (11) communicate to the executive director of the Kansas racing
3 commission as to whether a person, partnership or corporation has failed
4 to meet any tax obligation to the state of Kansas for the purpose of
5 determining whether such person, partnership or corporation is eligible for
6 a facility owner license or facility manager license pursuant to the Kansas
7 parimutuel racing act;

8 (12) provide such information to the executive director of the Kansas
9 public employees retirement system for the purpose of determining that
10 certain individuals' reported compensation is in compliance with the
11 Kansas public employees retirement act, K.S.A. 74-4901 et seq., and
12 amendments thereto;

13 (13) ~~(i)~~(A) provide taxpayer information of persons suspected of
14 violating K.S.A. ~~2017~~ 2018 Supp. 44-766, and amendments thereto, to the
15 secretary of labor or such secretary's designee for the purpose of
16 determining compliance by any person with the provisions of K.S.A. 44-
17 703(i)(3)(D) and K.S.A. ~~2017~~ 2018 Supp. 44-766, and amendments
18 thereto. The information to be provided shall include all relevant
19 information in the possession of the department of revenue necessary for
20 the secretary of labor to make a proper determination of compliance with
21 the provisions of K.S.A. 44-703(i)(3)(D) and K.S.A. ~~2017~~ 2018 Supp. 44-
22 766, and amendments thereto, and to calculate any unemployment
23 contribution taxes due. Such information to be provided by the department
24 of revenue shall include, but not be limited to, withholding tax and payroll
25 information, the identity of any person that has been or is currently being
26 audited or investigated in connection with the administration and
27 enforcement of the withholding and declaration of estimated tax act,
28 K.S.A. 79-3294 et seq., and amendments thereto, and the results or status
29 of such audit or investigation;

30 ~~(ii)~~(B) any person receiving tax information under the provisions of
31 this paragraph shall be subject to the same duty of confidentiality imposed
32 by law upon the personnel of the department of revenue and shall be
33 subject to any civil or criminal penalties imposed by law for violations of
34 such duty of confidentiality; and

35 ~~(iii)~~(C) each of the secretary of labor and the secretary of revenue
36 may adopt rules and regulations necessary to effect the provisions of this
37 paragraph;

38 (14) provide such information to the state treasurer for the sole
39 purpose of carrying out the provisions of K.S.A. 58-3934, and
40 amendments thereto. Such information shall be limited to current and prior
41 addresses of taxpayers or associated persons who may have knowledge as
42 to the location of an owner of unclaimed property. For the purposes of this
43 paragraph, "associated persons" includes spouses or dependents listed on

1 income tax returns;~~and~~

2 (15) after receipt of information pursuant to subsection (f), forward
3 such information and provide the following reported Kansas individual
4 income tax information for each listed defendant, if available, to the state
5 board of indigents' defense services in an electronic format and in the
6 manner determined by the secretary: (A) The defendant's name; (B) social
7 security number; (C) Kansas adjusted gross income; (D) number of
8 exemptions claimed; and (E) the relevant tax year of such records. Any
9 social security number provided to the secretary and the state board of
10 indigents' defense services pursuant to this section shall remain
11 confidential; *and*

12 (16) *disclose taxpayer information that is received from income tax*
13 *returns to the department of commerce for the purpose of including such*
14 *information in the database required by section 1, and amendment thereto.*

15 (d) Any person receiving information under the provisions of
16 subsection (c) shall be subject to the confidentiality provisions of
17 subsection (b) and to the penalty provisions of subsection (e).

18 (e) Any violation of subsection (b) or (c) is a class A nonperson
19 misdemeanor and, if the offender is an officer or employee of the state,
20 such officer or employee shall be dismissed from office.

21 (f) For the purpose of determining whether a defendant is financially
22 able to employ legal counsel under the provisions of K.S.A. 22-4504, and
23 amendments thereto, in all felony cases with appointed counsel where the
24 defendant's social security number is accessible from the records of the
25 district court, the court shall electronically provide the defendant's name,
26 social security number, district court case number and county to the
27 secretary of revenue in the manner and format agreed to by the office of
28 judicial administration and the secretary.

29 (g) Nothing in this section shall be construed to allow disclosure of
30 the amount of income or any particulars set forth or disclosed in any
31 report, return, federal return or federal return information, where such
32 disclosure is prohibited by the federal internal revenue code as in effect on
33 September 1, 1996, and amendments thereto, related federal internal
34 revenue rules or regulations, or other federal law.

35 Sec. 4. K.S.A. 2017 Supp. 75-5133, as amended by section 37 of
36 chapter 89 of the 2018 Session Laws of Kansas, and 79-3234, as amended
37 by section 38 of chapter 89 of the 2018 Session Laws of Kansas are hereby
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.