

HOUSE BILL No. 2135

By Committee on Commerce and Economic Development

1-31

1 AN ACT concerning taxation; relating to misclassification of employees
2 to avoid tax withholding, contributions and reporting requirements;
3 amending K.S.A. 2010 Supp. 79-3234 and repealing the existing
4 section; also repealing K.S.A. 2010 Supp. 44-766.

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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 79-3234 is hereby amended to read as
8 follows: 79-3234. (a) All reports and returns required by this act shall be
9 preserved for three years and thereafter until the director orders them to
10 be destroyed.

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

31 (c) The secretary or the secretary's designee may: (1) Publish
32 statistics, so classified as to prevent the identification of particular reports
33 or returns and the items thereof;

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

36 (3) provide the post auditor access to all income tax reports or

1 returns in accordance with and subject to the provisions of subsection (g)
2 of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

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

7 (5) disclose to the secretary of commerce the following: (A) Specific
8 taxpayer information related to financial information previously
9 submitted by the taxpayer to the secretary of commerce concerning or
10 relevant to any income tax credits, for purposes of verification of such
11 information or evaluating the effectiveness of any tax credit or economic
12 incentive program administered by the secretary of commerce; (B) the
13 amount of payroll withholding taxes an employer is retaining pursuant to
14 K.S.A. 2010 Supp. 74-50,212, and amendments thereto; (C) information
15 received from businesses completing the form required by K.S.A. 2010
16 Supp. 74-50,217, and amendments thereto; and (D) findings related to a
17 compliance audit conducted by the department of revenue upon the
18 request of the secretary of commerce pursuant to K.S.A. 2010 Supp. 74-
19 50,215, and amendments thereto;

20 (6) disclose income tax returns to the state gaming agency to be used
21 solely for the purpose of determining qualifications of licensees of and
22 applicants for licensure in tribal gaming. Any information received by the
23 state gaming agency shall be confidential and shall not be disclosed
24 except to the executive director, employees of the state gaming agency
25 and members and employees of the tribal gaming commission;

26 (7) disclose the taxpayer's name, last known address and residency
27 status to the department of wildlife and parks to be used solely in its
28 license fraud investigations;

29 (8) disclose the name, residence address, employer or Kansas
30 adjusted gross income of a taxpayer who may have a duty of support in a
31 title IV-D case to the secretary of the Kansas department of social and
32 rehabilitation services for use solely in administrative or judicial
33 proceedings to establish, modify or enforce such support obligation in a
34 title IV-D case. In addition to any other limits on use, such use shall be
35 allowed only where subject to a protective order which prohibits
36 disclosure outside of the title IV-D proceeding. As used in this section,
37 "title IV-D case" means a case being administered pursuant to part D of
38 title IV of the federal social security act (42 U.S.C. § 651 et seq.) and
39 amendments thereto. Any person receiving any information under the
40 provisions of this subsection shall be subject to the confidentiality
41 provisions of subsection (b) and to the penalty provisions of subsection
42 (e);

43 (9) permit the commissioner of internal revenue of the United States,

1 or the proper official of any state imposing an income tax, or the
2 authorized representative of either, to inspect the income tax returns made
3 under this act and the secretary of revenue may make available or furnish
4 to the taxing officials of any other state or the commissioner of internal
5 revenue of the United States or other taxing officials of the federal
6 government, or their authorized representatives, information contained in
7 income tax reports or returns or any audit thereof or the report of any
8 investigation made with respect thereto, filed pursuant to the income tax
9 laws, as the secretary may consider proper, but such information shall not
10 be used for any other purpose than that of the administration of tax laws
11 of such state, the state of Kansas or of the United States;

12 (10) communicate to the executive director of the Kansas lottery
13 information as to whether a person, partnership or corporation is current
14 in the filing of all applicable tax returns and in the payment of all taxes,
15 interest and penalties to the state of Kansas, excluding items under formal
16 appeal, for the purpose of determining whether such person, partnership
17 or corporation is eligible to be selected as a lottery retailer;

18 (11) communicate to the executive director of the Kansas racing
19 commission as to whether a person, partnership or corporation has failed
20 to meet any tax obligation to the state of Kansas for the purpose of
21 determining whether such person, partnership or corporation is eligible
22 for a facility owner license or facility manager license pursuant to the
23 Kansas parimutuel racing act; *and*

24 (12) provide such information to the executive director of the
25 Kansas public employees retirement system for the purpose of
26 determining that certain individuals' reported compensation is in
27 compliance with the Kansas public employees retirement act, at K.S.A.
28 74-4901 et seq., and amendments thereto; *and*

29 ~~(13) provide taxpayer information of persons suspected of violating~~
30 ~~K.S.A. 2010 Supp. 44-766, and amendments thereto, to the staff attorneys~~
31 ~~of the department of labor for the purpose of determining compliance by~~
32 ~~any person with the provisions of K.S.A. 2010 Supp. 44-766, and~~
33 ~~amendments thereto, which information shall be limited to withholding~~
34 ~~tax and payroll information, the identity of any person that has been or is~~
35 ~~currently being audited or investigated in connection with the~~
36 ~~administration and enforcement of the withholding and declaration of~~
37 ~~estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or~~
38 ~~status of such audit or investigation.~~

39 (d) Any person receiving information under the provisions of
40 subsection (c) shall be subject to the confidentiality provisions of
41 subsection (b) and to the penalty provisions of subsection (e).

42 (e) Any violation of subsection (b) or (c) is a class A nonperson
43 misdemeanor and, if the offender is an officer or employee of the state,

1 such officer or employee shall be dismissed from office.
2 (f) Nothing in this section shall be construed to allow disclosure of
3 the amount of income or any particulars set forth or disclosed in any
4 report, return, federal return or federal return information, where such
5 disclosure is prohibited by the federal internal revenue code as in effect
6 on September 1, 1996, and amendments thereto, related federal internal
7 revenue rules or regulations, or other federal law.
8 Sec. 2. K.S.A. 2010 Supp. 44-766 and 79-3234 are hereby repealed.
9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.
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