

SENATE BILL No. 504

By Committee on Commerce

2-11

9 AN ACT concerning tax benefits for Kansas businesses; amending K.S.A.
10 74-50,113, 74-50,135 and 79-3614 and K.S.A. 2003 Supp. 45-221, 74-
11 50,114, 74-50,115 and 79-3234 and repealing the existing sections; also
12 repealing K.S.A. 74-50,116, 74-50,117, 74-50,118, 74-50,119, 74-
13 50,132, 74-50,135a, 79-32,155, 79-32,156, 79-32,157, 79-32,158, 79-
14 32,159a, 79-32,159b, 79-32,159c, 79-32,160, 79-32,160b and 79-
15 32,160c and K.S.A. 2003 Supp. 74-50,131, 74-50,133, 74-50,134,
16 74-8017, 74-8017a, 79-32,153, 79-32,154 and 79-32,160a.
17

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

19 New Section 1. The purpose of this act is to create a simple, flexible
20 and progressive system of tax benefits to equitably promote the devel-
21 opment of Kansas businesses.

22 New Sec. 2. As used in this act:

23 (a) "Average private sector wages" means the aggregate total wages
24 paid that are reported to the Kansas department of human resources,
25 divided by the average headcount reported on those same documents,
26 for the designated geographical area.

27 (b) "Commencement of commercial operations" is deemed to occur
28 during the first taxable year for which the qualified worksite is first avail-
29 able for use by the taxpayer, or first capable of being used by the taxpayer,
30 in the revenue producing enterprise in which the taxpayer intends to use
31 the qualified worksite.

32 (c) "Direct training costs" means costs that are eligible under the
33 Kansas industrial training program, the Kansas industrial re-training pro-
34 gram, or the state of Kansas investment in lifelong learning component
35 of the investments in major projects and comprehensive training program,
36 as well as the direct wage costs of employees of the qualified worksite
37 who are receiving training in a classroom setting where no marketable
38 product is being generated.

39 (d) "Economic development project" means a description of how the
40 taxpayer intends to satisfy relevant selection criteria and the resultant
41 economic impacts that will be used by the secretary of commerce to
42 determine the credits that may be awarded. The secretary of commerce
43 shall devise the forms used to apply for credits, as well as any forms to

1 be used subsequently to gather information about and verify the actual
2 performance of the defined project, and for other needs of the program.
3 These forms, taken together with other documentation required by the
4 secretary of commerce, shall constitute an economic development project
5 application.

6 (e) "Investment that expands existing production capacity" means
7 that net investment in a tax year at the qualified worksite, plus appropriate
8 offsite investment in the same tax year, that exceeds \$50,000 and is more
9 than the historical average of net investment during the preceding five
10 tax years, or the number of tax years for which a tax filing has been made
11 for the qualified worksite, whichever is less.

12 (f) "Investment that maintains existing production capacity" means
13 that net investment in a tax year at the qualified worksite, plus appropriate
14 offsite investment, that exceeds \$50,000 and is equal to or less than the
15 historical average of net investment during the preceding five tax years,
16 or the number of tax years for which a tax filing has been made for the
17 qualified worksite, whichever is less.

18 (g) "Value of real and tangible personal property" shall be:

19 (1) Eight times the net annual rental rate, if leased by the taxpayer.
20 The net annual rental rate shall be the annual rental rate paid by the
21 taxpayer less any annual rental rate received by the taxpayer from
22 subrentals;

23 (2) original cost if owned by the taxpayer. Such original cost shall be
24 determined in the tax year in which the taxpayer places the property into
25 service;

26 (3) property financed with industrial revenue bonds shall be valued
27 at the amount associated with that property in company financial records
28 for federal tax purposes when that property is placed into service or be-
29 comes available for service;

30 (4) the value of real and tangible personal property shall not include
31 rolling stock, unless it is used exclusively at the qualified worksite, or
32 inventory or property held for sale to customers in the ordinary course
33 of the taxpayer's business, which is used by the taxpayer in the operation
34 of the qualified worksite, during the taxable year for which the credits
35 earned pursuant to this act are claimed; and

36 (5) real and tangible personal property that is moved from one lo-
37 cation in Kansas to another is not eligible for any credit.

38 (h) "Net investment" means the value of real and tangible personal
39 property placed into service in a tax year, less the original cost of any real
40 and tangible personal property that has been sold or scrapped or trans-
41 ferred from the qualified worksite.

42 (i) (1) "Qualified worksite employee" means a person employed by
43 the taxpayer in the operation of a qualified worksite during the taxable

1 year for which the job creation and retention credits allowed through this
2 act are claimed. Such employee must work 40 or more hours per week
3 in a position of at least one year duration, and must have been offered
4 health insurance by the taxpayer, and must file a Kansas income tax return
5 if required pursuant to K.S.A. 79-3220, and amendments thereto. Qual-
6 ified worksite employees shall be:

7 (A) Located at the qualifying worksite;

8 (B) perform services for the taxpayer outside the qualifying worksite
9 that are incidental to the employees service inside the qualifying worksite;
10 or

11 (C) perform services for the taxpayer that are directed or controlled
12 from the qualifying worksite, and for which the qualifying worksite serves
13 as a base of operations.

14 (2) "Qualified worksite employee" shall not mean any person who is
15 employed in the operation of a qualified worksite in the state due to the
16 merger, acquisition or other reconfiguration of the taxpayer unless such
17 employees position represents a net gain of total positions created by the
18 taxpayer and the employees position was not in existence at the time of
19 the merger, acquisition or other reconfiguration of the taxpayer.

20 (3) A qualified worksite employee shall not include any employee that
21 is moved from one location in Kansas to another.

22 (j) The "number of qualified worksite employees during a taxable
23 year" shall be determined by dividing by 12 the sum of the number of
24 qualified worksite employees on the last business day of each month of
25 such taxable year. If the qualified worksite is in operation for less than
26 the entire taxable year, the number of qualified worksite employees shall
27 be determined by dividing the sum of the number of qualified worksite
28 employees on the last business day of each full calendar month during
29 the portion of such taxable year during which the qualified worksite was
30 in operation by the number of full calendar months during such period.

31 (k) "The number of net new employees" shall be determined by sub-
32 tracting the number of qualified worksite employees for the previous tax
33 year from the number of qualified worksite employees for the current tax
34 year.

35 (l) "Qualified worksite" means a worksite which satisfies the require-
36 ments of paragraphs (1), (2) and (3) of this subsection.

37 (1) Any factory, mill, plant, refinery, warehouse, feedlot, building or
38 complex of buildings located within the state, including the land on which
39 such worksite is located and all machinery, equipment and other real and
40 tangible personal property located at or within such worksite used in
41 connection with the operation of such worksite. The word building shall
42 include only structures within which individuals are customarily employed
43 or which are customarily used to house machinery, equipment or other

1 property.

2 (2) Such worksite is employed by the taxpayer in the operation of a
3 revenue producing enterprise, except a swine production facility as de-
4 fined in K.S.A. 17-5903, and amendments thereto, and which may include
5 a worksite at which the sole activities may be administrative management
6 or operations that support the primary focus of the business or both. Such
7 worksite shall not be considered a qualified worksite in the hands of the
8 taxpayer if the taxpayer's only activity with respect to such worksite is to
9 lease it to another person or persons. If the taxpayer employs only a
10 portion of such worksite in the operation of a revenue producing enter-
11 prise, and leases another portion of such worksite to another person or
12 persons or does not otherwise use such other portions in the operation
13 of a revenue producing enterprise, the portion employed by the taxpayer
14 in the operation of a revenue producing enterprise shall be considered a
15 qualified worksite, if the requirements of paragraph (2) of this subsection
16 are satisfied.

17 (3) If such worksite was acquired by the taxpayer from another person
18 or persons, such worksite was not employed, immediately prior to the
19 transfer of title to such worksite to the taxpayer, or to the commencement
20 of the term of the lease of such facility to the taxpayer, by any other person
21 or persons in the operation of a revenue producing enterprise and the
22 taxpayer continues the operation of the same or substantially identical
23 revenue producing enterprise, as defined in subsection (r), at such
24 worksite.

25 (m) (1) "Offsite investment" means that investment in real and tan-
26 gible personal property that is identified in an economic development
27 project and is used in the operations of the business, but lies outside the
28 physical boundaries that are defined as a qualified worksite, except that
29 offsite investment shall not include rolling stock.

30 (2) Offsite investment that is equal to or less than the historical av-
31 erage of net offsite investment during the preceding five years, or the
32 number of tax years for which a tax filing has been made for the investing
33 business, whichever is less, shall be added in equal portions to investment
34 that maintains existing production capacity at each qualified worksite that
35 is participating in the defined economic development project.

36 (3) Offsite investment that is more than the historical average of net
37 offsite investment during the preceding five years, or the number of tax
38 years for which a tax filing has been made for the investing business,
39 whichever is less, shall be added in equal portions to investment that
40 expands existing production capacity at each qualified worksite that is
41 participating in the defined economic development project.

42 (n) "Qualified worksite average wage" means the aggregate total
43 wages paid at the worksite that are reported to the Kansas department of

1 human resources, divided by the average full-time-equivalent head-count,
2 based on a 40-hour workweek.

3 (o) “Regional economic development entities” means those entities
4 from which the Kansas business benefits program advisory council iden-
5 tifies an entity that will serve a region specified by the advisory council,
6 to evaluate and process economic development proposals submitted by
7 businesses seeking benefits from this program.

8 (p) “Retained position” means a position filled by an employee for at
9 least one year after that position would have been eliminated but for the
10 position retention benefit offered through this program. Such retained
11 positions shall be specifically identified in the economic development pro-
12 ject proposal submitted by a company, and a high standard of proof of
13 retention shall be required. Such positions shall be considered retained
14 upon approval of the business benefits advisory council.

15 (q) “Revenue producing enterprise” means:

16 (1) The assembly, fabrication, manufacture or processing of any ag-
17 ricultural, mineral or manufactured product;

18 (2) the storage, warehousing, distribution or sale of any products of
19 agriculture, aquaculture, mining or manufacturing;

20 (3) the feeding of livestock at a feedlot;

21 (4) the operation of laboratories or other facilities for scientific, ag-
22 ricultural, aquacultural, animal husbandry or industrial research, devel-
23 opment or testing;

24 (5) the performance of services of any type;

25 (6) the feeding of aquatic plants and animals at an aquaculture
26 operation;

27 (7) the administrative management of any of the foregoing activities;

28 or

29 (8) any combination of any of the foregoing activities. Revenue pro-
30 ducing enterprise shall not mean a swine production facility as defined in
31 K.S.A. 17-5903, and amendments thereto.

32 (r) “Same or substantially identical revenue producing enterprise”
33 means a revenue producing enterprise in which the products produced
34 or sold, services performed or activities conducted are the same in char-
35 acter and use, are produced, sold, performed or conducted in the same
36 manner and to or for the same type of customers as the products, services
37 or activities produced, sold, performed or conducted in another revenue
38 producing enterprise.

39 (s) “Selection criteria” means the criteria approved by the business
40 benefit program advisory council, the satisfaction of which criteria, alone
41 or in combination with each other, shall contribute to the determination
42 of tax credits earned by a taxpayer. The amount of credits earned may
43 vary based on the level of measurement units achieved for the criteria

1 under consideration, as well as consideration of the economic benefits to
2 the state and the local and regional communities. The secretary of com-
3 merce shall determine the amount of credits earned in an economic de-
4 velopment project that has been defined by a taxpayer.

5 (t) “Vested tax credit” means a credit against the tax imposed pur-
6 suant to the Kansas income tax act, the premium tax imposed on insur-
7 ance companies pursuant to K.S.A. 40-252, and amendments thereto, and
8 the privilege tax as measured by net income of financial institutions im-
9 posed pursuant to article 11 of chapter 79 of the Kansas Statutes Anno-
10 tated in an amount equal to 100% of the credit earned by the transferor
11 and awarded by the secretary of commerce. Such credit may be applied
12 by the transferor against any of these taxes or the unused balance sold or
13 otherwise transferred to a third party. Such third party, hereinafter des-
14 ignated the transferee, shall be allowed such credit against the tax im-
15 posed pursuant to the Kansas income tax act, the premium tax imposed
16 on insurance companies pursuant to K.S.A. 40-252, and amendments
17 thereto, or the privilege tax as measured by net income of financial in-
18 stitutions imposed pursuant to article 11 of chapter 79 of the Kansas
19 Statutes Annotated. For credits which are purchased as part of an asset
20 acquisition in which over 90% of the assets of a revenue producing en-
21 terprise are sold in a single transaction, any such credits remaining may
22 be purchased at a negotiated price as a part of the purchase transaction
23 and redeemed at 100% of their original value. Vested credits may be sold
24 or transferred only one time. The transferor shall make a declaration to
25 the secretary of revenue in the tax year such credit is earned or the suc-
26 cessive tax year of the intent to sell vested tax credits. Each individual
27 sale or transfer shall be at least 50% of the vested credit or \$50,000,
28 whichever is less. Vested tax credit amounts claimed by the transferee
29 shall be carried forward according to the provisions of the act under which
30 the credit was earned by the transferor. Such carry-forward period for
31 the transferee shall begin on the date the credit was originally earned by
32 the transferor and shall not exceed the end of the third taxable year suc-
33 ceeding the taxable year in which the credit was earned by the transferor.
34 A transferred credit may be claimed in the year purchased, or in any
35 subsequent tax year within the original carry-forward period. The trans-
36 feror shall enter into a written agreement with the transferee establishing
37 the terms and conditions of the sale or transfer and shall perfect such
38 transfer by notifying the secretary of revenue in writing within 30 calendar
39 days following the effective date of the transfer. The transferor and trans-
40 feree shall provide any information pertaining to the sale or transfer as
41 may be required by the secretary of revenue to administer and carry out
42 the provisions of this section.

43 New Sec. 3. In order to be eligible to receive tax credits pursuant to

1 this act, a taxpayer shall meet the following condition:

2 The taxpayer shall pay an average wage at its qualifying worksite in
3 excess of 80% of the statewide average private sector wage, if the average
4 private sector wage for the county in which the taxpayers qualifying work-
5 site is located is above the statewide average private sector wage, or in
6 excess of 80% of the county average private sector wage if the average
7 private sector wage of the county in which the taxpayers qualifying work-
8 site is located is less than the statewide average private sector wage, but
9 in no instance shall the taxpayer pay an average wage at its qualifying
10 worksite that is less than the federal minimum wage, using a one year
11 measurement period.

12 New Sec. 4. (a) For taxable years commencing after December 31,
13 2004, a taxpayer that has satisfied the requirements of section 3, and
14 amendments thereto, may be eligible for a tax credit determined through
15 selection criteria as defined in section 6, and amendments thereto. The
16 taxpayer shall submit an economic development project proposal, includ-
17 ing time frames for accomplishment of selection criteria and relevant
18 anticipated economic impacts. A potential tax credit maximum will be
19 awarded in writing, by the secretary of commerce, based on actual ac-
20 complishment of the selection criteria and economic impacts. Taxpayers
21 may document such accomplishment to the secretary of commerce not
22 more than twice each tax year. Tax credits awarded through the selection
23 criteria may be used, in any order, against the tax imposed by the Kansas
24 income tax, the premium tax or privilege fees imposed pursuant to K.S.A.
25 40-252, and amendments thereto, or as measured by the net income of
26 financial institutions imposed pursuant to article 11 of chapter 79 of the
27 Kansas Statutes Annotated.

28 (1) The credits awarded through the selection criteria are one-time
29 credits that must be claimed in the tax year in which the credits were
30 awarded. If the amount of the credit exceeds the income tax, premium
31 tax or privilege tax imposed for the taxable year, the amount which ex-
32 ceeds such tax liability may be carried forward for credit in the succeeding
33 taxable year or years until the total amount of the tax credit is used, except
34 that no such tax credit shall be carried forward after the 3rd taxable year
35 succeeding the taxable year in which credit initially was awarded by the
36 secretary of commerce. Use of credits in a tax year are subject to availa-
37 bility under the annual cap.

38 (2) No credits shall be awarded under this act until tax years begin-
39 ning on and after December 31, 2004. In no event shall the total amount
40 of credits awarded under this act, including carry-forwards, exceed the
41 established cap. The cap shall be \$50,000,000 and thereafter subject to
42 annual appropriation.

43 (3) The secretary of commerce shall evaluate the merits of any eco-

1 nomic development proposals for awards of such credits and shall award
2 such credits in accordance with the criteria set forth in this act. The
3 secretary is authorized to assess a processing fee for each predefined
4 economic development project proposed by a business entity. Such proc-
5 essing fee shall be set by the Kansas business benefits program advisory
6 council established in this act. The Kansas department of commerce and
7 the Kansas department of revenue are also each authorized to assess fees
8 to cover audit work by their respective employees that is deemed nec-
9 essary by those agencies, as well as user fees for other program related
10 expenses, and fees related to tracking the transfer and ownership of in-
11 vestment tax credits awarded through this program. Such fees are in-
12 tended to cover the costs of the number of commerce and revenue em-
13 ployees that the state deems necessary to properly administer this
14 program.

15 (4) The Kansas business benefits program advisory council estab-
16 lished in this act shall work with regional economic development entities,
17 in collaboration with the secretary of commerce, to identify an entity for
18 each region that will evaluate and process the smaller economic devel-
19 opment proposals submitted by businesses. Such entity shall be allotted
20 a portion of the total annual allocated credits, as determined by the ad-
21 visory council and the secretary of commerce, to use within the region it
22 has been identified to serve for this program. The advisory council shall
23 establish guidelines to determine whether an economic development pro-
24 posal will be evaluated and processed by the regional entity or by the
25 Kansas department of commerce. Summary information about economic
26 development projects that are evaluated and processed by the regional
27 entity shall be reported monthly to the secretary of commerce, and all
28 information about such development projects will be promptly made
29 available to the secretary of commerce upon request. Each regional entity
30 is authorized to assess a processing fee for each predefined economic
31 development project proposed by a business entity. Such processing fee
32 shall be set by the Kansas business benefits program advisory council.

33 (5) This act explicitly recognizes the need for audit work to improve
34 accuracy in the award of tax credits and exemptions. Toward that end,
35 fees authorized in this act are intended in aggregate to offset costs to the
36 state of exercising its oversight responsibilities in connection with these
37 economic development projects, including any audit work by state em-
38 ployees that is deemed necessary by the secretary of commerce or the
39 secretary of revenue. Such potential audit work by the state does not
40 necessarily substitute for or preclude the need for audit work by a dis-
41 interested third party. Such third party audit work, the nature of which
42 shall be specified by the secretary of commerce or the secretary of rev-
43 enue, and the costs of which shall be borne by the taxpayer applying for

1 the credits, may be required by the state as a prerequisite for award of
2 project credits. The state shall make efforts deemed reasonable in the
3 states judgment to minimize audit costs to the taxpayer, including the use
4 when possible of third party audit work already being performed for the
5 taxpayer.

6 (b) All income tax credits awarded pursuant to this act, and amend-
7 ments thereto, shall be deemed vested tax credits. No taxpayer may claim
8 any such credits on a return or transfer any such credits until the secretary
9 of commerce has verified and certified in writing that the taxpayer has
10 fully performed the activities necessary to satisfy the selection criteria and
11 be awarded such credits subject to audit verification by the secretary of
12 commerce or the secretary of revenue. The Kansas department of reve-
13 nue shall maintain a tracking system of the current ownership of all in-
14 vestment tax credits that have been used to offset a tax obligation and
15 that have and have not expired.

16 (c) The taxpayer claiming to earn such tax credits shall remain subject
17 to audit and assessment, by the department of revenue, pursuant to K.S.A.
18 79-3226, 79-3228, 79-3229, 79-3230 and 79-3233, and amendments
19 thereto, and by the department of commerce, without regard to whether
20 such tax credits have been transferred. If the department of revenue or
21 the department of commerce has determined that any taxpayer did not
22 earn tax credits that have been claimed on the taxpayers return or have
23 been transferred or sold to others, such taxpayer shall owe the department
24 of revenue or the department of insurance repayment of such income
25 tax, privilege tax or premiums tax, plus interest on such amount as pro-
26 vided in subsection (c) of K.S.A. 79-3228 and 79-1127, and amendments
27 thereto, accruing from the date taxes were due for the tax year in which
28 such credits were claimed to have been earned, plus a penalty of 100%
29 of the amount of such tax credits, in addition to any audit costs and other
30 fees assessed by either department as provided under subsection (b)(3)
31 of section 4, and amendments thereto.

32 (d) The secretary of commerce and each regional entity that evaluates
33 and processes economic development proposals shall make available $\frac{1}{4}$
34 of their annual allocation in credits for use in each calendar quarter of
35 the year. Within a given state fiscal year, at the end of each quarter,
36 unencumbered credits will be returned to the secretary of commerce.
37 Credits unencumbered at the end of a fiscal year cannot be encumbered
38 or used in any other fiscal year.

39 New Sec. 5. (a) There is hereby established the Kansas business ben-
40 efits program advisory council. The council shall consist of seven voting
41 members as follows:

42 (1) The secretary of commerce, who shall serve as chairperson of the
43 council;

- 1 (2) the secretary of revenue;
- 2 (3) the chairperson of the senate committee on commerce;
- 3 (4) the chairperson of the house committee on economic
4 development;
- 5 (5) the ranking minority member of the senate committee on
6 commerce;
- 7 (6) the ranking minority member of the house economic develop-
8 ment committee; and
- 9 (7) the director of the budget.
- 10 (b) Selection criteria shall be established by the advisory council, al-
11 lowing a taxpayer to be awarded tax credits that correspond to the level
12 of satisfaction achieved for each selection criterion.
- 13 (c) The selection criteria shall be subject to annual review and ap-
14 proval by majority vote of the advisory council. Unless revised by the
15 council, the most recently approved set of criteria shall continue in effect.
- 16 (d) The advisory council members or their designees shall meet at
17 least quarterly on the call of the chairperson, to monitor and evaluate
18 program processes and effectiveness. Four voting members of the council
19 shall constitute a quorum.
- 20 New Sec. 6. The secretary of commerce and the secretary of revenue
21 shall promulgate rules and regulations to carry out the provisions of this
22 act. The secretary of commerce shall also develop the initial selection
23 criteria, to be approved by the business benefits program advisory council,
24 which shall provide a basis for determining the amount of potential tax
25 credits to be awarded. The selection criteria may include, but not be
26 limited to:
- 27 (a) The annual average wage paid by the taxpayer at its qualifying
28 worksite relative to: (1) The county annual average private sector wage
29 for the county in which the taxpayer's worksite is located, for those coun-
30 ties with an average annual private sector wage below the statewide av-
31 erage annual private sector wage; and (2) the statewide average annual
32 private sector wage for the county in which the taxpayer's worksite is
33 located, for those counties with an average annual private sector wage at
34 or above the statewide average annual private sector wage.
- 35 (b) The amount of qualified worksite investment that maintains ex-
36 isting production capacity, in conjunction with the worksite location.
- 37 (c) The amount of qualified worksite investment that expands existing
38 production capacity, in conjunction with the worksite location.
- 39 (d) The total number of net new employees at the qualified worksite,
40 in conjunction with the worksite location.
- 41 (e) The total number of retained positions at the qualified worksite,
42 in conjunction with the worksite location.
- 43 (f) Whether the taxpayer has expended an amount greater than 2%

1 of the qualifying worksite's gross wages paid, as reported to the Kansas
2 department of human resources, in direct training costs.

3 (g) The average annual unemployment rate of the county in which
4 the taxpayer's qualifying worksite is located, when compared to the states
5 average annual unemployment rate.

6 (h) The average annual percentage of population growth or decline
7 for the county in which the taxpayer's qualified worksite is located, when
8 compared to the states average annual percentage of population growth
9 or decline.

10 New Sec. 7. The amount of tax credits awarded through this act shall
11 depend on satisfaction of the various selection criteria established by the
12 Kansas business benefits advisory council.

13 New Sec. 8. In the application of this act, proprietary information
14 that is sensitive and important to a taxpayer's competitiveness may be
15 discussed with the Kansas secretary of commerce.

16 New Sec. 9. Taxpayers shall provide to the secretary of revenue or
17 the secretary of commerce upon request any information needed to de-
18 termine or verify such taxpayer's eligibility, qualification for or the amount
19 of any credits applied for or claimed. The secretary of revenue may share
20 with the secretary of commerce, and the secretary of commerce may
21 share with the secretary of revenue, any such information received, in-
22 cluding applications for credits, reports, schedules, returns or other doc-
23 umentation. Any employee of the department of revenue receiving any
24 such information from the department of commerce, or any employee of
25 the department of commerce receiving any such information from the
26 department of revenue shall remain subject to the confidentiality provi-
27 sions of subsection (b) and to the penalty provisions of subsection (d) of
28 K.S.A. 79-3234, and amendments thereto.

29 New Sec. 10. The Kansas business benefits program advisory council
30 shall commission an analysis of this program, to take place during fiscal
31 year 2007. The analysis shall evaluate all aspects of the program, and
32 particularly the effectiveness of each criterion in the selection criteria,
33 the impact of each individual criteria on the Kansas economy, the com-
34 bined impact of those criteria that must be satisfied together in order to
35 earn credits, and the overall impact of the program on the Kansas econ-
36 omy. The analysis shall include a recommendation for continuation, dis-
37 continuation or alteration of the program.

38 New Sec. 11. Except as otherwise provided, for tax years beginning
39 on or before December 31, 2004, no additional credits earned through
40 the Kansas enterprise zone act, K.S.A. 79-32,160a; the high performance
41 incentive act, K.S.A. 79-32,160a and K.S.A. 74-50,115; or the job expan-
42 sion and investment tax credit act, K.S.A. 79-32,153 may be claimed on
43 any amended return, above the amount of such credits claimed on the

1 taxpayers original return filed for such tax year. New worksites in the
2 process of establishing a measurement period for the high performance
3 incentive program, to obtain certification for the period during which the
4 investment was made to establish the new worksite, shall be able to
5 amend previous returns to capture the related investment tax credits.

6 Sec. 12. K.S.A. 2003 Supp. 45-221 is hereby amended to read as
7 follows: 45-221. (a) Except to the extent disclosure is otherwise required
8 by law, a public agency shall not be required to disclose:

9 (1) Records the disclosure of which is specifically prohibited or re-
10 stricted by federal law, state statute or rule of the Kansas supreme court
11 or the disclosure of which is prohibited or restricted pursuant to specific
12 authorization of federal law, state statute or rule of the Kansas supreme
13 court to restrict or prohibit disclosure.

14 (2) Records which are privileged under the rules of evidence, unless
15 the holder of the privilege consents to the disclosure.

16 (3) Medical, psychiatric, psychological or alcoholism or drug depend-
17 ency treatment records which pertain to identifiable patients.

18 (4) Personnel records, performance ratings or individually identifi-
19 able records pertaining to employees or applicants for employment, except
20 that this exemption shall not apply to the names, positions, salaries and
21 lengths of service of officers and employees of public agencies once they
22 are employed as such.

23 (5) Information which would reveal the identity of any undercover
24 agent or any informant reporting a specific violation of law.

25 (6) Letters of reference or recommendation pertaining to the char-
26 acter or qualifications of an identifiable individual.

27 (7) Library, archive and museum materials contributed by private
28 persons, to the extent of any limitations imposed as conditions of the
29 contribution.

30 (8) Information which would reveal the identity of an individual who
31 lawfully makes a donation to a public agency, if anonymity of the donor
32 is a condition of the donation.

33 (9) Testing and examination materials, before the test or examination
34 is given or if it is to be given again, or records of individual test or ex-
35 amination scores, other than records which show only passage or failure
36 and not specific scores.

37 (10) Criminal investigation records, except that the district court, in
38 an action brought pursuant to K.S.A. 45-222, and amendments thereto,
39 may order disclosure of such records, subject to such conditions as the
40 court may impose, if the court finds that disclosure:

41 (A) Is in the public interest;

42 (B) would not interfere with any prospective law enforcement action;

43 (C) would not reveal the identity of any confidential source or un-

1 dercover agent;

2 (D) would not reveal confidential investigative techniques or proce-
3 dures not known to the general public;

4 (E) would not endanger the life or physical safety of any person; and

5 (F) would not reveal the name, address, phone number or any other
6 information which specifically and individually identifies the victim of any
7 sexual offense in article 35 of chapter 21 of the Kansas Statutes Anno-
8 tated, and amendments thereto.

9 (11) Records of agencies involved in administrative adjudication or
10 civil litigation, compiled in the process of detecting or investigating vio-
11 lations of civil law or administrative rules and regulations, if disclosure
12 would interfere with a prospective administrative adjudication or civil
13 litigation or reveal the identity of a confidential source or undercover
14 agent.

15 (12) Records of emergency or security information or procedures of
16 a public agency, or plans, drawings, specifications or related information
17 for any building or facility which is used for purposes requiring security
18 measures in or around the building or facility or which is used for the
19 generation or transmission of power, water, fuels or communications, if
20 disclosure would jeopardize security of the public agency, building or
21 facility.

22 (13) The contents of appraisals or engineering or feasibility estimates
23 or evaluations made by or for a public agency relative to the acquisition
24 of property, prior to the award of formal contracts therefor.

25 (14) Correspondence between a public agency and a private individ-
26 ual, other than correspondence which is intended to give notice of an
27 action, policy or determination relating to any regulatory, supervisory or
28 enforcement responsibility of the public agency or which is widely dis-
29 tributed to the public by a public agency and is not specifically in response
30 to communications from such a private individual.

31 (15) Records pertaining to employer-employee negotiations, if dis-
32 closure would reveal information discussed in a lawful executive session
33 under K.S.A. 75-4319, and amendments thereto.

34 (16) Software programs for electronic data processing and documen-
35 tation thereof, but each public agency shall maintain a register, open to
36 the public, that describes:

37 (A) The information which the agency maintains on computer facil-
38 ities; and

39 (B) the form in which the information can be made available using
40 existing computer programs.

41 (17) Applications, financial statements and other information sub-
42 mitted in connection with applications for student financial assistance
43 where financial need is a consideration for the award.

- 1 (18) Plans, designs, drawings or specifications which are prepared by
2 a person other than an employee of a public agency or records which are
3 the property of a private person.
- 4 (19) Well samples, logs or surveys which the state corporation com-
5 mission requires to be filed by persons who have drilled or caused to be
6 drilled, or are drilling or causing to be drilled, holes for the purpose of
7 discovery or production of oil or gas, to the extent that disclosure is limited
8 by rules and regulations of the state corporation commission.
- 9 (20) Notes, preliminary drafts, research data in the process of anal-
10 ysis, unfunded grant proposals, memoranda, recommendations or other
11 records in which opinions are expressed or policies or actions are pro-
12 posed, except that this exemption shall not apply when such records are
13 publicly cited or identified in an open meeting or in an agenda of an open
14 meeting.
- 15 (21) Records of a public agency having legislative powers, which re-
16 cords pertain to proposed legislation or amendments to proposed legis-
17 lation, except that this exemption shall not apply when such records are:
- 18 (A) Publicly cited or identified in an open meeting or in an agenda
19 of an open meeting; or
- 20 (B) distributed to a majority of a quorum of any body which has au-
21 thority to take action or make recommendations to the public agency with
22 regard to the matters to which such records pertain.
- 23 (22) Records of a public agency having legislative powers, which re-
24 cords pertain to research prepared for one or more members of such
25 agency, except that this exemption shall not apply when such records are:
- 26 (A) Publicly cited or identified in an open meeting or in an agenda
27 of an open meeting; or
- 28 (B) distributed to a majority of a quorum of any body which has au-
29 thority to take action or make recommendations to the public agency with
30 regard to the matters to which such records pertain.
- 31 (23) Library patron and circulation records which pertain to identi-
32 fiable individuals.
- 33 (24) Records which are compiled for census or research purposes and
34 which pertain to identifiable individuals.
- 35 (25) Records which represent and constitute the work product of an
36 attorney.
- 37 (26) Records of a utility or other public service pertaining to individ-
38 ually identifiable residential customers of the utility or service, except that
39 information concerning billings for specific individual customers named
40 by the requester shall be subject to disclosure as provided by this act.
- 41 (27) Specifications for competitive bidding, until the specifications
42 are officially approved by the public agency.
- 43 (28) Sealed bids and related documents, until a bid is accepted or all

1 bids rejected.

2 (29) Correctional records pertaining to an identifiable inmate or re-
3 lease, except that:

4 (A) The name; photograph and other identifying information; sen-
5 tence data; parole eligibility date; custody or supervision level; disciplinary
6 record; supervision violations; conditions of supervision, excluding
7 requirements pertaining to mental health or substance abuse counseling;
8 location of facility where incarcerated or location of parole office main-
9 taining supervision and address of a releasee whose crime was committed
10 after the effective date of this act shall be subject to disclosure to any
11 person other than another inmate or releasee, except that the disclosure
12 of the location of an inmate transferred to another state pursuant to the
13 interstate corrections compact shall be at the discretion of the secretary
14 of corrections;

15 (B) the ombudsman of corrections, the attorney general, law enforce-
16 ment agencies, counsel for the inmate to whom the record pertains and
17 any county or district attorney shall have access to correctional records to
18 the extent otherwise permitted by law;

19 (C) the information provided to the law enforcement agency pursu-
20 ant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and
21 amendments thereto, shall be subject to disclosure to any person, except
22 that the name, address, telephone number or any other information which
23 specifically and individually identifies the victim of any offender required
24 to register as provided by the Kansas offender registration act, K.S.A. 22-
25 4901 *et seq.* and amendments thereto, shall not be disclosed; and

26 (D) records of the department of corrections regarding the financial
27 assets of an offender in the custody of the secretary of corrections shall
28 be subject to disclosure to the victim, or such victim's family, of the crime
29 for which the inmate is in custody as set forth in an order of restitution
30 by the sentencing court.

31 (30) Public records containing information of a personal nature
32 where the public disclosure thereof would constitute a clearly unwar-
33 ranted invasion of personal privacy.

34 (31) Public records pertaining to prospective location of a business
35 or industry where no previous public disclosure has been made of the
36 business' or industry's interest in locating in, relocating within or expand-
37 ing within the state. This exception shall not include those records per-
38 taining to application of agencies for permits or licenses necessary to do
39 business or to expand business operations within this state, except as
40 otherwise provided by law.

41 (32) Engineering and architectural estimates made by or for any pub-
42 lic agency relative to public improvements.

43 (33) Financial information submitted by contractors in qualification

- 1 statements to any public agency.
- 2 (34) Records involved in the obtaining and processing of intellectual
3 property rights that are expected to be, wholly or partially vested in or
4 owned by a state educational institution, as defined in K.S.A. 76-711, and
5 amendments thereto, or an assignee of the institution organized and ex-
6 isting for the benefit of the institution.
- 7 (35) Any report or record which is made pursuant to K.S.A. 65-4922,
8 65-4923 or 65-4924, and amendments thereto, and which is privileged
9 pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.
- 10 (36) Information which would reveal the precise location of an ar-
11 cheological site.
- 12 (37) Any financial data or traffic information from a railroad company,
13 to a public agency, concerning the sale, lease or rehabilitation of the
14 railroad's property in Kansas.
- 15 (38) Risk-based capital reports, risk-based capital plans and corrective
16 orders including the working papers and the results of any analysis filed
17 with the commissioner of insurance in accordance with K.S.A. 40-2c20
18 and 40-2d20 and amendments thereto.
- 19 (39) Memoranda and related materials required to be used to support
20 the annual actuarial opinions submitted pursuant to subsection (b) of
21 K.S.A. 40-409, and amendments thereto.
- 22 (40) Disclosure reports filed with the commissioner of insurance un-
23 der subsection (a) of K.S.A. 40-2,156, and amendments thereto.
- 24 (41) All financial analysis ratios and examination synopses concerning
25 insurance companies that are submitted to the commissioner by the na-
26 tional association of insurance commissioners' insurance regulatory infor-
27 mation system.
- 28 (42) Any records the disclosure of which is restricted or prohibited
29 by a tribal-state gaming compact.
- 30 (43) Market research, market plans, business plans and the terms and
31 conditions of managed care or other third party contracts, developed or
32 entered into by the university of Kansas medical center in the operation
33 and management of the university hospital which the chancellor of the
34 university of Kansas or the chancellor's designee determines would give
35 an unfair advantage to competitors of the university of Kansas medical
36 center.
- 37 (44) The amount of franchise tax paid to the secretary of state by
38 domestic corporations, foreign corporations, domestic limited liability
39 companies, foreign limited liability companies, domestic limited partner-
40 ship, foreign limited partnership, domestic limited liability partnerships
41 and foreign limited liability partnerships.
- 42 (45) Records the disclosure of which would pose a substantial likeli-
43 hood of revealing security measures that protect: (A) Systems, facilities

1 or equipment used in the production, transmission or distribution of en-
2 ergy, water or communications services; or (B) sewer or wastewater treat-
3 ment systems, facilities or equipment. For purposes of this paragraph,
4 security means measures that protect against criminal acts intended to
5 intimidate or coerce the civilian population, influence government policy
6 by intimidation or coercion or to affect the operation of government by
7 disruption of public services, mass destruction, assassination or
8 kidnapping.

9 (46) Any information or material received by the secretary of state
10 pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amend-
11 ments thereto, except when such information is required to be submitted
12 in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amend-
13 ments thereto.

14 (47) *Proprietary information received by the secretary of commerce*
15 *pursuant to the provisions of section 1 et seq.*, and amendments thereto,
16 except that such information upon request shall be made available to the
17 legislative postaudit division.

18 (b) Except to the extent disclosure is otherwise required by law or as
19 appropriate during the course of an administrative proceeding or on ap-
20 peal from agency action, a public agency or officer shall not disclose fi-
21 nancial information of a taxpayer which may be required or requested by
22 a county appraiser or the director of property valuation to assist in the
23 determination of the value of the taxpayer's property for ad valorem tax-
24 ation purposes; or any financial information of a personal nature required
25 or requested by a public agency or officer, including a name, job descrip-
26 tion or title revealing the salary or other compensation of officers, em-
27 ployees or applicants for employment with a firm, corporation or agency,
28 except a public agency. Nothing contained herein shall be construed to
29 prohibit the publication of statistics, so classified as to prevent identifi-
30 cation of particular reports or returns and the items thereof.

31 (c) As used in this section, the term "cited or identified" shall not
32 include a request to an employee of a public agency that a document be
33 prepared.

34 (d) If a public record contains material which is not subject to dis-
35 closure pursuant to this act, the public agency shall separate or delete
36 such material and make available to the requester that material in the
37 public record which is subject to disclosure pursuant to this act. If a public
38 record is not subject to disclosure because it pertains to an identifiable
39 individual, the public agency shall delete the identifying portions of the
40 record and make available to the requester any remaining portions which
41 are subject to disclosure pursuant to this act, unless the request is for a
42 record pertaining to a specific individual or to such a limited group of
43 individuals that the individuals' identities are reasonably ascertainable, the

1 public agency shall not be required to disclose those portions of the record
2 which pertain to such individual or individuals.

3 (e) The provisions of this section shall not be construed to exempt
4 from public disclosure statistical information not descriptive of any identi-
5 fiable person.

6 (f) Notwithstanding the provisions of subsection (a), any public rec-
7 ord which has been in existence more than 70 years shall be open for
8 inspection by any person unless disclosure of the record is specifically
9 prohibited or restricted by federal law, state statute or rule of the Kansas
10 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and
11 amendments thereto.

12 Sec. 13. On and after December 31, 2004, K.S.A. 74-50,113 is
13 hereby amended to read as follows: 74-50,113. The provisions of K.S.A.
14 74-50,113 through ~~74-50,120~~ and K.S.A. 1992 Supp. ~~79-32,160a~~ through
15 ~~79-32,160e~~ 74-50,115 and amendments thereto shall be known and may
16 be cited as the Kansas enterprise zone act.

17 Sec. 14. On and after December 31, 2004, K.S.A. 2003 Supp. 74-
18 50,114 is hereby amended to read as follows: 74-50,114. As used in K.S.A.
19 74-50,113 through ~~74-50,117~~ 74-50,115 and amendments thereto:

20 (a) "Ancillary support" means a facility which is operated by a busi-
21 ness and whose function is to provide services in support of the business,
22 but is not directly engaged in the business' primary function.

23 (b) "Business" means any manufacturing business or nonmanufac-
24 turing business.

25 (c) "Business headquarters" means a facility where principal officers
26 of the business are housed and from which direction, management or
27 administrative support for transactions is provided for a business or di-
28 vision of a business or regional division of a business.

29 (d) "Full-time employee" means a person who is required to file a
30 Kansas income tax return and who is employed by a business or retail
31 business to perform duties in connection with the operation of the busi-
32 ness or retail business on:

33 (1) A regular, full-time basis;

34 (2) a part-time basis, provided such person is customarily performing
35 such duties at least 20 hours per week throughout the taxable year; or

36 (3) a seasonal basis, provided such person performs such duties for
37 substantially all of the season customary for the position in which such
38 person is employed. The number of full-time employees during any tax-
39 able year shall be determined by dividing by 12 the sum of the number
40 of full-time employees on the last business day of each month of such
41 taxable year. If the business or retail business is in operation for less than
42 the entire taxable year, the number of full-time employees shall be de-
43 termined by dividing the sum of the number of full-time employees on

1 the last business day of each full calendar month during the portion of
 2 such taxable year during which the business was in operation by the num-
 3 ber of full calendar months during such period.

4 (e) “Manufacturing business” means all commercial enterprises iden-
 5 tified under the manufacturing standard industrial classification codes,
 6 major groups 20 through 39.

7 ~~(f) “Metropolitan county” means the county of Douglas, Johnson,~~
 8 ~~Leavenworth, Sedgwick, Shawnee or Wyandotte.~~

9 ~~(g)~~ (g) “Nonmanufacturing business” means any commercial enterprise
 10 other than a manufacturing business or a retail business. Nonmanufac-
 11 turing business shall also include the business headquarters of an enter-
 12 prise, ancillary support of an enterprise, and an enterprise designated
 13 under standard industrial classification codes 5961, 7948-0201 or 7372
 14 regardless of the firm’s classification as a retail business if that facility for
 15 which the sales tax exemption certificate is issued facilitates the creation
 16 of at least 20 new full-time positions. In addition, with respect to enter-
 17 prises in standard industrial classification code 7948-0201, such enter-
 18 prises must operate an auto racetrack in the state involving capital im-
 19 provements costing not less than \$100,000,000.

20 For taxable years commencing after December 31, 1997, any ancillary
 21 support business which would otherwise be eligible for a sales tax ex-
 22 emption ~~or an income, premium or privilege tax credit~~ pursuant to this
 23 subsection shall incorporate in its tax filing for the exemption ~~or credit~~ a
 24 statement from the secretary of commerce which includes a finding by
 25 the secretary that the job expansion incident to the exemption ~~or credit~~
 26 claimed would not have occurred in the absence of the ~~credit or~~
 27 exemption.

28 ~~(h) “Nonmetropolitan region” means a region established under~~
 29 ~~K.S.A. 74-50,116 and amendments thereto and is comprised of any county~~
 30 ~~or counties which are not metropolitan counties.~~

31 ~~(i)~~ (g) “Retail business” means: (1) Any commercial enterprise pri-
 32 marily engaged in the sale at retail of goods or services taxable under the
 33 Kansas retailers’ sales tax act; (2) any service provider set forth in K.S.A.
 34 17-2707, and amendments thereto; (3) any bank, savings and loan or other
 35 lending institution; (4) any commercial enterprise whose primary business
 36 activity includes the sale of insurance; and (5) any commercial enterprise
 37 deriving its revenues directly from noncommercial customers in exchange
 38 for personal services such as, but not limited to, barber shops, beauty
 39 shops, photographic studios and funeral services.

40 ~~(j)~~ (h) “Secretary” means the secretary of the Kansas department of
 41 commerce.

42 ~~(k)~~ (i) “Standard industrial classification code” means a standard in-
 43 dustrial classification code published in the Standard Industrial Classifi-

1 cation manual, 1987, as prepared by the statistical policy division of the
2 office of management and budget of the office of the president of the
3 United States of America.

4 Sec. 15. On and after December 31, 2004, K.S.A. 2003 Supp. 74-
5 50,115 is hereby amended to read as follows: 74-50,115. (a) A manufac-
6 turing business may be eligible for a sales tax exemption under the pro-
7 visions of subsection (cc) of K.S.A. 79-3606, and amendments thereto, if
8 the manufacturing business complies with the following requirements:

9 (1) A manufacturing business shall provide documented evidence of
10 job expansion involving the employment of at least two additional full-
11 time employees; and

12 (2) a manufacturing business located within the state of Kansas that
13 has documented evidence of job expansion as provided in paragraph (1),
14 which relocates in another city or county within the state of Kansas must
15 receive approval from the secretary prior to qualifying for the sales tax
16 exemption in subsection (cc) of K.S.A. 79-3606, and amendments thereto,
17 except that approval by the secretary shall not be required if the manu-
18 facturing business relocates within the same city.

19 (b) A nonmanufacturing business may be eligible for a sales tax ex-
20 emption under the provisions of subsection (cc) of K.S.A. 79-3606, and
21 amendments thereto, if the nonmanufacturing business complies with the
22 following requirements:

23 (1) A nonmanufacturing business shall provide documented evidence
24 of job expansion involving the employment of at least five additional full-
25 time employees; and

26 (2) a nonmanufacturing business located within the state of Kansas
27 that has documented evidence of job expansion as provided in paragraph
28 (1), which relocates in another city or county within the state of Kansas
29 must receive approval from the secretary prior to qualifying for the sales
30 tax exemption in subsection (cc) of K.S.A. 79-3606, and amendments
31 thereto, except that approval by the secretary shall not be required if the
32 nonmanufacturing business relocates within the same city.

33 (c) A retail business may qualify for the sales tax exemption under
34 subsection (cc) of K.S.A. 79-3606, and amendments thereto, if the retail
35 business complies with the following requirements:

36 (1) A retail business shall provide documented evidence of job ex-
37 pansion involving the employment of at least two additional full-time em-
38 ployees; and

39 (2) (A) such retail business locates or expands to a city having a pop-
40 ulation of 2,500 or less, as determined by the latest United States federal
41 census, or (B) such retail business locates or expands prior to July 1, 2004,
42 to a location outside a city in a county having a population of 10,000 or
43 less, as determined by the latest United States federal census.

1 (d) Any person constructing, reconstructing, remodeling or enlarging
2 a facility which will be leased in whole or in part for a period of five years
3 or more to a business that would be eligible for a sales tax exemption
4 hereunder if such business had constructed, reconstructed, enlarged or
5 remodeled such facility or portion thereof itself shall be entitled to the
6 sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-
7 3606, and amendments thereto. When such person leases less than the
8 total facility to an eligible business, a project exemption certificate may
9 be granted on: (1) The total cost of constructing, reconstructing, remodel-
10 ing or enlarging, the facility multiplied by a fraction given by dividing
11 the number of leased square feet eligible for the sales tax exemption by
12 the total square feet being constructed, reconstructed, remodeled or en-
13 larged; or (2) the actual cost of constructing, reconstructing, remodeling
14 or enlarging that portion of the facility to be occupied by the eligible
15 business, as the person may elect.

16 (e) ~~A business may qualify for a sales tax exemption under subsection~~
17 ~~(cc) of K.S.A. 79-3606, and amendments thereto, without regard to any~~
18 ~~of the foregoing requirements of this section if it is certified as a qualified~~
19 ~~firm by the secretary of commerce pursuant to K.S.A. 74-50,131, and~~
20 ~~amendments thereto, and is entitled to the corporate tax credit estab-~~
21 ~~lished in K.S.A. 74-50,132, and amendments thereto, or has received writ-~~
22 ~~ten approval for participation and has participated, during the tax year in~~
23 ~~which the exemption is claimed, in training assistance by the department~~
24 ~~of commerce under the Kansas industrial training, Kansas industrial re-~~
25 ~~training or state of Kansas investments in lifelong learning program.~~

26 (f) The secretary may adopt rules and regulations to implement and
27 administer the provisions of this section.

28 Sec. 16. On and after December 31, 2004, K.S.A. 74-50,135 is
29 hereby amended to read as follows: 74-50,135. The provisions of K.S.A.
30 74-50,115 and ~~K.S.A. 74-50,132 and 79-32,160a~~ shall be effective for tax-
31 able years commencing after December 31, 1992.

32 Sec. 17. K.S.A. 2003 Supp. 79-3234 is hereby amended to read as
33 follows: 79-3234. (a) All reports and returns required by this act shall be
34 preserved for three years and thereafter until the director orders them
35 to be destroyed.

36 (b) Except in accordance with proper judicial order, or as provided
37 in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,
38 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall
39 be unlawful for the director, any deputy, agent, clerk or other officer,
40 employee or former employee of the department of revenue or any other
41 state officer or employee or former state officer or employee to divulge,
42 or to make known in any way, the amount of income or any particulars
43 set forth or disclosed in any report, return, federal return or federal return

1 information required under this act; and it shall be unlawful for the di-
2 rector, any deputy, agent, clerk or other officer or employee engaged in
3 the administration of this act to engage in the business or profession of
4 tax accounting or to accept employment, with or without consideration,
5 from any person, firm or corporation for the purpose, directly or indi-
6 rectly, of preparing tax returns or reports required by the laws of the state
7 of Kansas, by any other state or by the United States government, or to
8 accept any employment for the purpose of advising, preparing material
9 or data, or the auditing of books or records to be used in an effort to
10 defeat or cancel any tax or part thereof that has been assessed by the
11 state of Kansas, any other state or by the United States government.

12 (c) Nothing in this section shall be construed to prohibit the publi-
13 cation of statistics, so classified as to prevent the identification of partic-
14 ular reports or returns and the items thereof, or the inspection of returns
15 by the attorney general or other legal representatives of the state. Nothing
16 in this section shall prohibit the post auditor from access to all income
17 tax reports or returns in accordance with and subject to the provisions of
18 subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments
19 thereto. Nothing in this section shall be construed to prohibit the disclo-
20 sure of taxpayer information from income tax returns to persons or en-
21 tities contracting with the secretary of revenue where the secretary has
22 determined disclosure of such information is essential for completion of
23 the contract and has taken appropriate steps to preserve confidentiality.
24 Nothing in this section shall be construed to prohibit the disclosure of
25 job creation and investment information derived from tax schedules re-
26 quired to be filed under the Kansas income tax act to the secretary of
27 commerce. Nothing in this section shall be construed to prohibit the
28 disclosure of income tax returns to the state gaming agency to be used
29 solely for the purpose of determining qualifications of licensees of and
30 applicants for licensure in tribal gaming. Any information received by the
31 state gaming agency shall be confidential and shall not be disclosed except
32 to the executive director, employees of the state gaming agency and mem-
33 bers and employees of the tribal gaming commission. Nothing in this
34 section shall be construed to prohibit the disclosure of the taxpayer's
35 name, last known address and residency status to the department of wild-
36 life and parks to be used solely in its license fraud investigations. Nothing
37 in this section shall prohibit the disclosure of the name, residence address,
38 employer or Kansas adjusted gross income of a taxpayer who may have a
39 duty of support in a title IV-D case to the secretary of the Kansas de-
40 partment of social and rehabilitation services for use solely in administra-
41 tive or judicial proceedings to establish, modify or enforce such support
42 obligation in a title IV-D case. In addition to any other limits on use, such
43 use shall be allowed only where subject to a protective order which pro-

1 hibits disclosure outside of the title IV-D proceeding. As used in this
2 section, “title IV-D case” means a case being administered pursuant to
3 part D of title IV of the federal social security act (42 U.S.C. § 651 *et*
4 *seq.*) and amendments thereto. Any person receiving any information un-
5 der the provisions of this subsection shall be subject to the confidentiality
6 provisions of subsection (b) and to the penalty provisions of subsection
7 (d).

8 (d) Any violation of subsection (b) or (c) is a class B nonperson mis-
9 demeanor and, if the offender is an officer or employee of the state, such
10 officer or employee shall be dismissed from office.

11 (e) Notwithstanding the provisions of this section, the secretary of
12 revenue may permit the commissioner of internal revenue of the United
13 States, or the proper official of any state imposing an income tax, or the
14 authorized representative of either, to inspect the income tax returns
15 made under this act and the secretary of revenue may make available or
16 furnish to the taxing officials of any other state or the commissioner of
17 internal revenue of the United States or other taxing officials of the fed-
18 eral government, or their authorized representatives, information con-
19 tained in income tax reports or returns or any audit thereof or the report
20 of any investigation made with respect thereto, filed pursuant to the in-
21 come tax laws, as the secretary may consider proper, but such information
22 shall not be used for any other purpose than that of the administration
23 of tax laws of such state, the state of Kansas or of the United States.

24 (f) Notwithstanding the provisions of this section, the secretary of
25 revenue may:

26 (1) Communicate to the executive director of the Kansas lottery in-
27 formation as to whether a person, partnership or corporation is current
28 in the filing of all applicable tax returns and in the payment of all taxes,
29 interest and penalties to the state of Kansas, excluding items under formal
30 appeal, for the purpose of determining whether such person, partnership
31 or corporation is eligible to be selected as a lottery retailer;

32 (2) communicate to the executive director of the Kansas racing com-
33 mission as to whether a person, partnership or corporation has failed to
34 meet any tax obligation to the state of Kansas for the purpose of deter-
35 mining whether such person, partnership or corporation is eligible for a
36 facility owner license or facility manager license pursuant to the Kansas
37 parimutuel racing act; and

38 (3) provide such information to the ~~president of Kansas, Inc. secre-~~
39 ~~tary of commerce~~ as required by ~~K.S.A. 74-8017~~ *section 1 et seq.*, and
40 amendments thereto. The ~~president~~ *secretary of commerce* and any em-
41 ployees or former employees of ~~Kansas, Inc. the department of commerce~~
42 receiving any such information shall be subject to the confidentiality pro-
43 visions of subsection (b) and to the penalty provisions of subsection (d).

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

7 Sec. 18. K.S.A. 79-3614 is hereby amended to read as follows: 79-
8 3614. All information received by the director from returns filed under
9 this act, or from any investigations conducted under the provisions of this
10 act, shall be confidential, except for official purposes, and it shall be un-
11 lawful for any officer or employee of such director to divulge any such
12 information in any manner, except in accordance with a proper judicial
13 order, or as provided in K.S.A. 74-2424, and amendments thereto. The
14 post auditor shall have access to all such information in accordance with
15 and subject to the provisions of subsection (g) of K.S.A. 46-1106, and
16 amendments thereto. Nothing in this section shall be construed to pro-
17 hibit the disclosure of taxpayer information from sales tax returns to per-
18 sons or entities contracting with the secretary of revenue where the sec-
19 retary has determined disclosure of such information is essential for
20 completion of the contract and has taken appropriate steps to preserve
21 confidentiality. Notwithstanding the provisions of this section, the sec-
22 retary of revenue may provide such information to the ~~president of Kan-~~
23 ~~sas, Inc. secretary of commerce~~ as required by K.S.A. 1997 Supp. 74-8017
24 *authorized by section 1, et seq.*, and amendments thereto. Any person
25 receiving any such information pursuant to this section shall be subject
26 to the same duty of confidentiality imposed on officers and employees of
27 the department of revenue by this section and shall be subject to any civil
28 or criminal penalties imposed by law for violations of such duty of
29 confidentiality.

30 Sec. 19. K.S.A. 79-3614 and K.S.A. 2003 Supp. 45-221 and 79-3234
31 are hereby repealed.

32 Sec. 20. On and after December 31, 2004, K.S.A. 74-50,113, 74-
33 50,116, 74-50,117, 74-50,118, 74-50,119, 74-50,132, 74-50,135, 74-
34 50,135a, 79-32,155, 79-32,156, 79-32,157, 79-32,158, 79-32,159a, 79-
35 32,159b, 79-32,159c, 79-32,160, 79-32,160b and 79-32,160c and K.S.A.
36 2003 Supp. 74-50,114, 74-50,115, 74-50,131, 74-50,133, 74-50,134, 74-
37 8017, 74-8017a, 79-32,153, 79-32,154 and 79-32,160a are hereby
38 repealed.

39 Sec. 21. This act shall take effect and be in force from and after its
40 publication in the statute book.