

## SENATE BILL No. 176

By Committee on Assessment and Taxation

2-13

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

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

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

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

(2) "Economic development incentive program" means:

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

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

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

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

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

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

(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.