

HOUSE BILL No. 2358

By Committee on Taxation

2-27

9 AN ACT enacting the investment in Kansas employment act; amending
10 K.S.A. 2008 Supp. 74-50,115 and repealing the existing section.

11

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

13 New Section 1. As used in sections 1 through 4, and amendments
14 thereto:

15 (a) "Act" means sections 1 through 4, and amendments thereto.

16 (b) "Agreement" means an agreement entered into between the el-
17 ible business and the secretary for benefits under this act.

18 (c) "Bioscience company" shall have the same meaning as that term
19 is given in K.S.A. 2008 Supp. 74-99b33, and amendments thereto.

20 (d) "County average wage" means the average wage paid to employ-
21 ees located in the county where the eligible business intends to hire new
22 employees as reported by the department of labor in its annual report for
23 the previous year. For metropolitan counties the "county average wage"
24 shall not include wages paid to employees in retail businesses.

25 (e) (1) "Eligible business" means any commercial enterprise which
26 meets the requirements of section 2, and amendments thereto.

27 (2) "Eligible business" shall not include bioscience companies, retail
28 businesses or companies qualifying for benefits under K.S.A. 19-4106 et
29 seq., 74-50,103 et seq., 74-50,120 et seq. or 74-50,136, and amendments
30 thereto.

31 (3) Notwithstanding the provisions of paragraph (2), an "eligible busi-
32 ness" includes any retail business located within a rural city that meets
33 the requirements of section 2, and amendments thereto.

34 (f) "Metropolitan county" means the county of Douglas, Johnson,
35 Sedgwick, Shawnee or Wyandotte.

36 (g) "New employee" means a person newly employed by the taxpayer
37 in the taxpayer's business operating in Kansas during the taxable year for
38 which benefits are sought under section 2, and amendments thereto. A
39 person shall be deemed to be so engaged if such person performs duties
40 in Kansas in connection with the operation of the Kansas business on: (A)
41 A regular, full-time basis; (B) a part-time basis, provided such person is
42 customarily performing such duties at least 20 hours per week throughout
43 the taxable year; or (C) a seasonal basis, provided such person performs

1 such duties for substantially all of the season customary for the position
2 in which such person is employed. For a Kansas business that becomes
3 operational during the current tax year, new employees shall be the num-
4 ber of employees employed at the taxpayer's Kansas business on the last
5 business day of the taxpayer's tax year. In the case of employees hired, in
6 which the Kansas business existed and was operated by the taxpayer prior
7 to such hiring, the number of new employees employed in the operation
8 of the Kansas business shall be reduced by the number of employees
9 employed at such Kansas business on the last business day of the tax-
10 payer's previous tax year. Employees acquired through an acquisition or
11 merger of a business operating in Kansas shall not be considered as new
12 employees.

13 (h) "Non-metropolitan county" means any county that is not a met-
14 ropolitan county.

15 (i) "Retail business" means:

16 (1) Any commercial enterprise primarily engaged in the sale at retail
17 of goods or services taxable under the Kansas retailers' sales tax act;

18 (2) any service provider set forth in K.S.A. 17-2707, and amendments
19 thereto;

20 (3) any bank, savings and loan or other lending institution;

21 (4) any commercial enterprise whose primary business activity in-
22 cludes the sale of insurance; and

23 (5) any commercial enterprise deriving its revenues directly from
24 noncommercial customers in exchange for personal services such as, but
25 not limited to, barber shops, beauty shops, photographic studios and fu-
26 neral services.

27 (j) "Rural city" means any city with a population of not more than
28 10,000, as certified to the secretary of state by the director of the division
29 of the budget on the previous July 1 in accordance with K.S.A. 11-201,
30 and amendments thereto.

31 (k) "Secretary" means the secretary of the department of commerce.

32 New Sec. 2. (a) Any eligible business located in a metropolitan
33 county that will hire at least 10 new employees, and that will compensate
34 such new employees at a rate equal to at least 100% of the county average
35 wage, may be eligible to receive payments pursuant to this act equal to
36 100% of the eligible business's Kansas payroll withholding taxes for such
37 new employees for a period of five years from the date of execution of
38 an agreement with the secretary pursuant to section 3, and amendments
39 thereto.

40 (b) Any eligible business located in a metropolitan county that will
41 hire at least 10 new employees, and that will compensate such new em-
42 ployees at a rate equal to at least 120% of the county average wage, may
43 be eligible to receive: (1) Payments pursuant to this act equal to 100% of

1 the eligible business's Kansas payroll withholding taxes for such new em-
2 ployees for the first five years from the date of execution of an agreement
3 with the secretary pursuant to section 3, and amendments thereto; and
4 (2) payments pursuant to this act equal to 50% of the eligible business's
5 Kansas payroll withholding taxes for such new employees for two years
6 after the expiration of the first five-year period.

7 (c) Any eligible business located in a non-metropolitan county that
8 will hire at least 2 new employees, and that will compensate such new
9 employees at a rate equal to at least 100% of the county average wage,
10 may be eligible to receive payments pursuant to this act equal to 100%
11 of the eligible business's Kansas payroll withholding taxes for such new
12 employees for a period of five years from the date of execution of an
13 agreement with the secretary pursuant to section 3, and amendments
14 thereto.

15 (d) Any eligible business located in a non-metropolitan county that
16 will hire at least 2 new employees, and that will compensate such new
17 employees at a rate equal to at least 120% of the county average wage,
18 may be eligible to receive: (1) Payments pursuant to this act equal to
19 100% of the eligible business's Kansas payroll withholding taxes for such
20 new employees for the first five years from the date of execution of an
21 agreement with the secretary pursuant to section 3, and amendments
22 thereto; and (2) payments pursuant to this act equal to 50% of the eligible
23 business's Kansas payroll withholding taxes for such new employees for
24 two years after the expiration of the first five-year period.

25 New Sec. 3. (a) An eligible business meeting the requirements of
26 section 2, and amendments thereto, may apply to the secretary to enter
27 into an agreement for benefits under this act. The application shall be
28 submitted on a form and in a manner prescribed by the secretary, and
29 shall include: (1) Evidence that the applicant is an eligible business, as
30 defined in section 1, and amendments thereto; (2) evidence that the ap-
31 plicant meets the requirements of section 2, and amendments thereto;
32 and (3) a certification that the eligible business is able to hire the new
33 employees solely due to the benefits being provided under this act.

34 (b) Upon receipt of an application described in subsection (a), if the
35 secretary finds that the application is from an eligible business and meets
36 the requirements of section 2, and amendments thereto, the secretary
37 shall enter into an agreement with the eligible business for benefits under
38 this act. The agreement shall commit the secretary to request that:

39 (1) For an eligible business meeting the requirements set forth in
40 subsections (a) and (c) of section 2, and amendments thereto, that for a
41 period of no longer than five years from the date of execution of such
42 agreement an amount not to exceed 100% of the amount of Kansas payroll
43 withholding taxes paid by the eligible business for wages paid to the new

1 employees, be transferred by the state treasurer from the investment in
2 Kansas employment program fund created in subsection (d) to the eligible
3 business; or

4 (2) for an eligible business meeting the requirements set forth in
5 subsections (b) and (d) of section 2, and amendments thereto, that for a
6 period of no longer than five years from the date of execution of such
7 agreement an amount not to exceed 100% of the amount of Kansas payroll
8 withholding taxes paid by the eligible business for wages paid to the new
9 employees, be transferred by the state treasurer from the investment in
10 Kansas employment program fund created in subsection (d) to the eligible
11 business, and that for a period of no longer than two years from the
12 expiration of the first five-year period an amount not to exceed 50% of
13 the amount of Kansas payroll withholding taxes paid by the eligible busi-
14 ness for wages paid to the new employees, be transferred by the state
15 treasurer from the investment in Kansas employment program fund cre-
16 ated in subsection (d) to the eligible business.

17 (c) The agreement shall set forth the terms and conditions under
18 which the secretary shall direct the state treasurer to transfer moneys in
19 the investment in Kansas employment program fund to the eligible busi-
20 ness. In the event the eligible business fails to comply with the terms and
21 conditions set forth in the agreement, the agreement shall provide that
22 the secretary may terminate the agreement, and the eligible business shall
23 not be entitled to further distributions from the investment in Kansas
24 employment program fund.

25 (d) The state treasurer shall credit all revenue collected or received
26 from withholding upon Kansas wages paid by an eligible business that has
27 entered into an agreement with the secretary pursuant to subsection (b),
28 as certified by the secretary, to the investment in Kansas employment
29 program fund, which fund is hereby created in the custody of the state
30 treasurer, but which fund shall not be a part of the state treasury or the
31 state general fund. Distributions from the fund shall not be subject to
32 appropriation. On or before the 10th day of each month, the director of
33 accounts and reports shall transfer from the state general fund to the
34 investment in Kansas employment program fund interest earnings based
35 on:

36 (1) The average daily balance of moneys in the investment in Kansas
37 employment program fund for the preceding month; and

38 (2) the net earnings rate of the pooled money investment portfolio
39 for the preceding month. Moneys credited to the investment in Kansas
40 employment program fund in accordance with the foregoing provisions
41 shall be distributed on the order of the secretary. The state treasurer shall
42 make such distributions on such dates as mutually agreed to by the sec-
43 retary and the state treasurer, serving as paying agent pursuant to the

1 terms of the agreement.

2 (e) The agreement between the eligible business and the secretary
3 shall be entered into before any benefits may be provided under this act,
4 and shall specify that should the eligible business fail to comply with the
5 terms set forth in the agreement, the secretary may terminate the agree-
6 ment, and the eligible business shall not be entitled to further distribu-
7 tions from the investment in Kansas employment program fund.

8 (f) In the event an agreement is terminated by the secretary pursuant
9 to this section, all funds in the investment in Kansas employment program
10 fund which would have been paid to the eligible business under this act
11 shall, upon certification by the secretary of the termination of the agree-
12 ment, be transferred from the investment in Kansas employment program
13 fund to the state general fund.

14 (g) Benefits authorized pursuant to this act shall not be used to pro-
15 vide for or to increase compensation packages, rewards, bonuses, pension,
16 enhanced retirement, stock options, buyouts or substantial severance pay
17 or other financial benefits to any chief executive officer, chief financial
18 officer or any other officers of the eligible business.

19 New Sec. 4. (a) The secretary shall conduct an annual review of the
20 activities undertaken by an eligible business pursuant to this act to ensure
21 that benefits issued pursuant to this act are issued in compliance with the
22 provisions of this act or rules and regulations adopted by the secretary
23 with respect to this act.

24 (b) Any violation of the reporting requirements set forth in the agree-
25 ment shall be grounds for loss of designation as an eligible business under
26 this act.

27 (c) If the secretary determines that an eligible business is not in sub-
28 stantial compliance with the requirements of this act, the secretary, by
29 written notice, shall inform the officers of the eligible business that such
30 eligible business shall lose its designation as an eligible business unless
31 such eligible business corrects the deficiencies and is once again in com-
32 pliance with the requirements for designation.

33 New Sec. 5. The secretary shall transmit annually to the governor,
34 the standing committee on commerce of the senate, the standing com-
35 mittee on economic development and tourism of the house of represen-
36 tatives and the joint committee on economic development, or any suc-
37 cessor committee, a report, based upon information received from each
38 eligible business for which benefits have been issued during the preceding
39 year, describing the following:

40 (1) The manner in which the purpose, as described in this act, has
41 been carried out;

42 (2) an estimate of new employees hired by cash investments made in
43 eligible businesses; and

1 (3) an estimate of the multiplier effect on the Kansas economy of the
2 cash investments made pursuant to this act.

3 Sec. 6. K.S.A. 2008 Supp. 74-50,115 is hereby amended to read as
4 follows: 74-50,115. (a) A manufacturing business may be eligible for a
5 sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-
6 3606, and amendments thereto, if the manufacturing business complies
7 with the following requirements:

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

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

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

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

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

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

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

38 (2) (A) such retail business locates or expands to a city having a pop-
39 ulation of ~~2,500~~ 10,000 or less, as determined by the latest United States
40 federal census, or (B) such retail business locates or expands prior to July
41 1, 2010, to a location outside a city in a county having a population of
42 10,000 or less, as determined by the latest United States federal census.

43 (d) Any person constructing, reconstructing, remodeling or enlarging

1 a facility which will be leased in whole or in part for a period of five years
2 or more, or commencing on the effective date of this act and ending on
3 April 1, 2007, any person constructing, reconstructing, remodeling or en-
4 larging a facility located within Saline county which title of such facility
5 will be conveyed, to a business that would be eligible for a sales tax ex-
6 emption hereunder if such business had constructed, reconstructed, en-
7 larged or remodeled such facility or portion thereof itself shall be entitled
8 to the sales tax exemption under the provisions of subsection (cc) of K.S.A.
9 79-3606, and amendments thereto. When such person leases less than
10 the total facility to an eligible business, a project exemption certificate
11 may be granted on: (1) The total cost of constructing, reconstructing,
12 remodeling or enlarging, the facility multiplied by a fraction given by
13 dividing the number of leased square feet eligible for the sales tax ex-
14 emption by the total square feet being constructed, reconstructed, re-
15 modeled or enlarged; or (2) the actual cost of constructing, reconstruct-
16 ing, remodeling or enlarging that portion of the facility to be occupied by
17 the eligible business, as the person may elect.

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

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

30 Sec. 7. K.S.A. 2008 Supp. 74-50,115 is hereby repealed.

31 Sec. 8. This act shall take effect and be in force from and after its
32 publication in the statute book.