

**Substitute for HOUSE BILL No. 2572**

By Committee on Taxation

3-6

1 AN ACT concerning the department of commerce; relating to the  
2 disclosure of economic development incentive program data, tax credit  
3 programs and certain property tax exemptions; required database;  
4 amending K.S.A. 2017 Supp. 75-5133 and 79-3234 and repealing the  
5 existing sections.

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

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

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

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

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

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

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

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

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

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

34 (5) "Social and domestic tax credits" means the adoption credit  
35 created pursuant to K.S.A. 79-202a, and amendments thereto, the earned  
36 income tax credit created pursuant to K.S.A. 2017 Supp. 79-32,205, and

1 amendments thereto, the food sales tax credit created pursuant to K.S.A.  
2 2017 Supp. 79-32,271, and amendments thereto, the child and dependent  
3 care tax credit created pursuant to K.S.A. 2017 Supp. 79-32,111c, and  
4 amendments thereto, and the homestead property tax refund created  
5 pursuant to K.S.A. 79-4501 et seq., and amendments thereto.

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

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

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

27 (1) User information for each economic development incentive  
28 program, including the:

29 (A) Names and addresses, including county, of recipients receiving  
30 benefits from the program and, for sales tax and revenue bonds issued  
31 under the STAR bond financing act, K.S.A. 2017 Supp. 12-17,162 et seq.,  
32 and amendments thereto, the names of principals and officers for each  
33 project developer;

34 (B) annual amount of incentives claimed and distributed to each  
35 recipient;

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

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

41 (E) years for which the recipient has received benefits under the  
42 economic development incentive program;

43 (2) descriptive information for each economic development program,

1 which shall include:

2 (A) A description and history of the program, including its inception  
3 date;

4 (B) the purpose or goals of the program and the criteria for  
5 qualification;

6 (C) applications for the program, if any, and relevant resources or  
7 contacts;

8 (D) the program cost and return on investment, including  
9 assumptions used to calculate the return on investment;

10 (E) the program compliance rate;

11 (F) annual reports, if required by statute; and

12 (G) evaluations of the program, if any; and

13 (3) annual data, which shall be organized by recipient, county and  
14 program and shall include the:

15 (A) Total amount of annual incentives from a program claimed by a  
16 recipient;

17 (B) total amount of incentives received by recipients in each county;  
18 and

19 (C) total amount of incentives distributed by each program.

20 (d) Data collected pursuant to this section must be aggregated and  
21 provided by program, recipient and county.

22 (e) Information required to be included in the database under  
23 subsection (c) shall not be disclosed if such disclosure would violate any  
24 federal law or confidentiality provisions of any agreement executed before  
25 July 1, 2018, or if, in the discretion of the secretary of commerce, such  
26 disclosure would be detrimental to the development of a STAR bond  
27 project.

28 Sec. 2. K.S.A. 2017 Supp. 75-5133 is hereby amended to read as  
29 follows: 75-5133. (a) Except as otherwise more specifically provided by  
30 law, all information received by the secretary of revenue, the director of  
31 taxation or the director of alcoholic beverage control from returns, reports,  
32 license applications or registration documents made or filed under the  
33 provisions of any law imposing any sales, use or other excise tax  
34 administered by the secretary of revenue, the director of taxation, or the  
35 director of alcoholic beverage control, or from any investigation conducted  
36 under such provisions, shall be confidential, and it shall be unlawful for  
37 any officer or employee of the department of revenue to divulge any such  
38 information except in accordance with other provisions of law respecting  
39 the enforcement and collection of such tax, in accordance with proper  
40 judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

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

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

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

3 (3) provide the post auditor access to all such excise tax reports or  
4 returns in accordance with and subject to the provisions of K.S.A. 46-  
5 1106(g), and amendments thereto;

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

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

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

25 (7) provide information from returns and applications for registration  
26 filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-  
27 3601, and amendments thereto, to a city or county treasurer or clerk or  
28 finance officer to explain the basis of statistics contained in reports  
29 provided by subsection (b)(6);

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

40 (9) release or publish liquor brand registration information provided  
41 by suppliers, farm wineries, microdistilleries and microbreweries in  
42 accordance with the liquor control act. The information to be released is  
43 limited to: Item number, universal numeric code, type status, product

1 description, alcohol percentage, selling units, unit size, unit of  
2 measurement, supplier number, supplier name, distributor number and  
3 distributor name;

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

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

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

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

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

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

38 (16) provide to retailers tax exemption information for the sole  
39 purpose of verifying the authenticity of tax exemption numbers issued by  
40 the department;

41 (17) provide information concerning remittance by sellers, as defined  
42 in K.S.A. 2017 Supp. 12-5363, and amendments thereto, of prepaid  
43 wireless 911 fees from returns to the local collection point administrator,

1 as defined in K.S.A. 2017 Supp. 12-5363, and amendments thereto, for  
2 purposes of verifying seller compliance with collection and remittance of  
3 such fees;

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

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

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

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

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

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

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

38 Sec. 3. K.S.A. 2017 Supp. 79-3234 is hereby amended to read as  
39 follows: 79-3234. (a) All reports and returns required by this act shall be  
40 preserved for three years and thereafter until the director orders them to be  
41 destroyed.

42 (b) Except in accordance with proper judicial order, or as provided in  
43 subsection (c) or in K.S.A. 17-7511, ~~subsection (g) of K.S.A. 46-1106(g),~~

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

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

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

24 (3) provide the post auditor access to all income tax reports or returns  
25 in accordance with and subject to the provisions of ~~subsection (g) of~~  
26 ~~K.S.A. 46-1106(g) or K.S.A. 46-1114~~, and amendments thereto;

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

31 (5) disclose to the secretary of commerce the following: (A) Specific  
32 taxpayer information related to financial information previously submitted  
33 by the taxpayer to the secretary of commerce concerning or relevant to any  
34 income tax credits, for purposes of verification of such information or  
35 evaluating the effectiveness of any tax credit or economic incentive  
36 program administered by the secretary of commerce; (B) the amount of  
37 payroll withholding taxes an employer is retaining pursuant to K.S.A.  
38 2017 Supp. 74-50,212, and amendments thereto; (C) information received  
39 from businesses completing the form required by K.S.A. 2017 Supp. 74-  
40 50,217, and amendments thereto; and (D) findings related to a compliance  
41 audit conducted by the department of revenue upon the request of the  
42 secretary of commerce pursuant to K.S.A. 2017 Supp. 74-50,215, and  
43 amendments thereto;

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

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

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

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

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

41 (11) communicate to the executive director of the Kansas racing  
42 commission as to whether a person, partnership or corporation has failed  
43 to meet any tax obligation to the state of Kansas for the purpose of



1 determining whether such person, partnership or corporation is eligible for  
2 a facility owner license or facility manager license pursuant to the Kansas  
3 parimutuel racing act;

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

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

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

31 ~~(iii)(C)~~ each of the secretary of labor and the secretary of revenue  
32 may adopt rules and regulations necessary to effect the provisions of this  
33 paragraph;

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

41 (15) after receipt of information pursuant to subsection (f), forward  
42 such information and provide the following reported Kansas individual  
43 income tax information for each listed defendant, if available, to the state

1 board of indigents' defense services in an electronic format and in the  
2 manner determined by the secretary: (A) The defendant's name; (B) social  
3 security number; (C) Kansas adjusted gross income; (D) number of  
4 exemptions claimed; and (E) the relevant tax year of such records. Any  
5 social security number provided to the secretary and the state board of  
6 indigents' defense services pursuant to this section shall remain  
7 confidential; *and*

8 *(16) disclose taxpayer information that is received from income tax*  
9 *returns to the department of commerce for the purpose of including such*  
10 *information in the database required by section 1, and amendments*  
11 *thereto.*

12 (d) Any person receiving information under the provisions of  
13 subsection (c) shall be subject to the confidentiality provisions of  
14 subsection (b) and to the penalty provisions of subsection (e).

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

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

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

32 Sec. 4. K.S.A. 2017 Supp. 75-5133 and 79-3234 are hereby repealed.

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