

**SENATE BILL No. 223**

By Committee on Assessment and Taxation

3-7

1 AN ACT concerning economic development; relating to the promoting  
2 employment across Kansas act, business eligibility requirements,  
3 certain benefit qualification provision sunsets; amending K.S.A. 2016  
4 Supp. 74-50,212 and 74-50,213 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 74-50,212 is hereby amended to read as  
8 follows: 74-50,212. (a) In order to qualify for benefits under this act a  
9 qualified company shall:

10 (1) Relocate to Kansas, *from a distance of at least 250 miles*, an  
11 existing business facility, office, department or other operation doing  
12 business outside the state of Kansas and locate the jobs directly related to  
13 such relocated business facility, office, department or other operation in  
14 Kansas;

15 (2) locate a new business facility, office, department or other  
16 operation in Kansas and locate the jobs directly related to such business  
17 facility, office, department or other operation in Kansas, *except that no*  
18 *application for benefits pursuant to this paragraph shall be approved by*  
19 *the secretary on and after July 1, 2017; or*

20 (3) expand an existing business facility, office, department or other  
21 operation located in the state of Kansas and locate the jobs directly related  
22 to such business facility, office, department or other operation in Kansas,  
23 except that no payroll withholding taxes shall be retained prior to January  
24 1, 2012. *No application for benefits pursuant to this paragraph shall be*  
25 *approved by the secretary on and after July 1, 2017; or*

26 (4) *expand an existing business facility, office, department or other*  
27 *operation located outside the state of Kansas to a location in the state of*  
28 *Kansas and at least 250 miles from the business' primary site of operation*  
29 *outside the state of Kansas and locate the jobs directly related to such*  
30 *expansion of the business facility, office, department or other operation in*  
31 *Kansas.*

32 A qualified company may utilize or contract with a third-party  
33 employer to perform services whereby the third-party employer serves as  
34 the legal employer of the new employees providing services to the  
35 qualified company and such services are performed in Kansas and the  
36 third-party employer and the new employees are subject to the Kansas

1 withholding and declaration of estimated tax act.

2 (b) Any qualified company, approved by the secretary for benefits  
3 pursuant to ~~paragraph~~ subsection (a), that locates its business operation in  
4 a metropolitan county and will hire at least 10 new employees within two  
5 years from the date the qualified company enters into an agreement with  
6 the secretary pursuant to K.S.A. 2016 Supp. 74-50,213, and amendments  
7 thereto, or any qualified company, approved by the secretary for benefits  
8 pursuant to ~~paragraph~~ subsection (a), that locates its business operation in  
9 a non-metropolitan county and will hire at least five new employees within  
10 two years from the date the qualified company enters into an agreement  
11 with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213, and  
12 amendments thereto, shall: (1) Be eligible to retain 95% of the qualified  
13 company's Kansas payroll withholding taxes for such new employees  
14 being paid the county median wage or higher for a period of up to:

15 (A) Five years if the median wage or average wage paid to the new  
16 employees is equal to at least 100% of the county median wage;

17 (B) six years if the median wage or average wage paid to the new  
18 employees is equal to at least 110% of the county median wage;

19 (C) seven years if the median wage or average wage paid to the new  
20 employees is equal to at least 120% of the county median wage; or

21 (2) be eligible to retain 95% of the qualified company's Kansas  
22 payroll withholding taxes for such new employees being paid the county  
23 median wage or higher for a period of up to five years if the median wage  
24 or average wage paid to the new employees is equal to at least 100% of the  
25 NAICS code industry average wage.

26 *The secretary shall not approve any application for benefits, pursuant*  
27 *to subsection (a)(2) or (3), under this subsection on and after July 1, 2017.*

28 (c) Any qualified company, approved by the secretary for benefits  
29 pursuant to ~~paragraph~~ subsection (a), that engages in a high-impact project  
30 whereby the qualified company will hire at least 100 new employees  
31 within two years from the date the qualified company enters into an  
32 agreement with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213,  
33 and amendments thereto, shall be eligible to retain 95% of the qualified  
34 company's Kansas payroll withholding taxes for such new employees  
35 being paid the county median wage or higher for a period of up to:

36 (1) Seven years if the median wage or average wage paid to the new  
37 employees is equal to at least 100% of the county median wage;

38 (2) eight years if the median wage or average wage paid to the new  
39 employees is equal to at least 110% of the county median wage;

40 (3) nine years if the median wage or average wage paid to the new  
41 employees is equal to at least 120% of the county median wage; or

42 (4) ten years if the median wage or average wage paid to the new  
43 employees is equal to at least 140% of the county median wage.

1        *The secretary shall not approve any application for benefits, pursuant*  
2 *to subsection (a)(2) or (3), under this subsection on and after July 1, 2017.*

3        (d) In the event that a qualified company contracts with a third party  
4 as described in subsection (a), the third party shall remit payments equal to  
5 the amount of Kansas payroll withholding taxes the qualified company is  
6 eligible to retain under this section to the qualified company, and report  
7 such amount to the department of revenue as required pursuant to  
8 ~~subsection (a) of~~ K.S.A. 2016 Supp. 74-50,214(a), and amendments  
9 thereto.

10        (e) Commencing January 1, 2013, and ending June 30, ~~2018~~ 2017,  
11 any company, which meets the criteria provided pursuant to the provisions  
12 of K.S.A. 2016 Supp. 74-50,211, and amendments thereto, that retains the  
13 employees of an existing business unit located in Kansas and enters into an  
14 agreement with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213,  
15 and amendments thereto, shall be eligible to retain 95% of the qualified  
16 company's Kansas payroll withholding taxes for such employees for a  
17 period of up to five years.

18        (f) (1) Commencing January 1, 2013, and ending June 30, ~~2018~~ 2017,  
19 pursuant to the provisions of subsection (e), the secretary of commerce, in  
20 the secretary's sole determination, may provide the benefits of the  
21 promoting employment across Kansas act for situations where it is deemed  
22 necessary by the secretary that the state of Kansas provide incentives for a  
23 company or its operations currently located in Kansas to remain in Kansas  
24 so as to keep its retained jobs. The secretary shall establish and verify that  
25 a prospective company has competitive alternatives that it is seriously  
26 considering and that a company's relocation may be imminent.  
27 Furthermore, the secretary shall assess:

28        (A) Whether the retention of the company or its operations is  
29 important to the economic vitality of the state;

30        (B) the area where such company or operations is located; or

31        (C) whether the retention of the company or its operations is  
32 important to a particular industry in the state due to any number of factors  
33 including, but not limited to, the quantity, quality or wages of the retained  
34 jobs involved.

35        (2) Effective January 1, 2013, and ending June 30, ~~2018~~ 2017, the  
36 secretary may use the promoting employment across Kansas act in  
37 conjunction with other economic development programs to develop a  
38 retention package.

39        (g) The provisions of this act as in effect prior to ~~the effective date of~~  
40 ~~this act~~ July 1, 2011, shall apply to employers who have entered into  
41 agreements with the secretary prior to July 1, 2011. The provisions of this  
42 act shall apply to employers who enter into agreements with the secretary  
43 on and after July 1, 2011.

1 (h) In the event a qualified company entered into an agreement for  
2 benefits under this section prior to January 1, 2013, such qualified  
3 company may request the secretary to extend the benefit term of such  
4 agreement by a period of up to two additional years. If in the secretary's  
5 discretion it is necessary to provide the qualified company with all benefits  
6 intended under such agreement, the extension may be granted.

7 Sec. 2. K.S.A. 2016 Supp. 74-50,213 is hereby amended to read as  
8 follows: 74-50,213. (a) Any qualified company meeting the requirements  
9 of K.S.A. 2016 Supp. 74-50,212, and amendments thereto, may apply to  
10 the secretary for benefits under this act. The application shall be submitted  
11 on a form and in a manner prescribed by the secretary, and shall include:  
12 (1) Evidence that the applicant is a qualified company; and (2) evidence  
13 that the applicant meets the requirements of K.S.A. 2016 Supp. 74-50,212,  
14 and amendments thereto.

15 (b) The secretary may either approve or disapprove the application.  
16 Any qualified company whose application is approved shall be eligible to  
17 receive benefits under this act as of the date such qualified company enters  
18 into an agreement with the secretary in accordance with this section. *The*  
19 *secretary shall not approve any application for benefits pursuant to K.S.A.*  
20 *2016 Supp. 74-50,212(a)(2) or (3), and amendments thereto, on and after*  
21 *July 1, 2017.*

22 (c) Upon approval of an application for benefits under this act, the  
23 secretary may enter into an agreement with the qualified company for  
24 benefits under this act. If necessary, the secretary may also enter into an  
25 agreement with any third party described in ~~subsection (a)~~ of K.S.A. 2016  
26 Supp. 74-50,212(a), and amendments thereto, or such third party may be a  
27 party to the agreement between the qualified company and the secretary.  
28 The agreement shall commit the secretary to certify to the secretary of  
29 revenue: (1) That the qualified company is eligible to receive benefits  
30 under this act; (2) the number of new employees hired by the qualified  
31 company; and (3) the amount of gross wages being paid to each new  
32 employee.

33 *The secretary shall not enter into any agreements for benefits pursuant*  
34 *to K.S.A. 2016 Supp. 74-50,212(a)(2) or (3), and amendments thereto,*  
35 *under this act on and after July 1, 2017.*

36 (d) The agreement between the qualified company and the secretary  
37 shall be entered into before any benefits may be provided under this act,  
38 and shall specify that should the qualified company fail to comply with the  
39 terms and conditions set forth in the agreement, or fails to comply with the  
40 provisions set forth in this act, the secretary may terminate the agreement,  
41 and the qualified company shall not be entitled to any further benefits  
42 provided under this act and shall be required to remit to the state an  
43 amount equal to the aggregate Kansas payroll withholding taxes retained

1 by the qualified company, or remitted to the qualified company by a third  
2 party, pursuant to this act as of the date the agreement is terminated.

3 (e) A qualified company that is already receiving benefits pursuant to  
4 this act may apply to the secretary for additional benefits if the qualified  
5 company meets the requirements of K.S.A. 2016 Supp. 74-50,212, and  
6 amendments thereto.

7 *On and after July 1, 2017, the secretary shall not grant any additional*  
8 *benefits under this subsection to a qualified company approved for*  
9 *benefits pursuant to K.S.A. 2016 Supp. 74-50,212(a)(2) or (3), and*  
10 *amendments thereto.*

11 (f) A qualified company seeking benefits shall be allowed to  
12 participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,  
13 and amendments thereto, but shall not be allowed to participate in any  
14 other program in which any portion of such qualified company's Kansas  
15 payroll withholding taxes have been pledged to finance indebtedness or  
16 transferred to or for the benefit of such company. A qualified company  
17 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-  
18 32,160a or 79-32,182b, and amendments thereto, if such credits would  
19 otherwise be earned for the hiring of new employees and the qualified  
20 company has retained any Kansas payroll withholding taxes from wages of  
21 such employees. A qualified company shall not be eligible to receive  
22 benefits under K.S.A. 2016 Supp. 74-50,212, and amendments thereto, and  
23 under K.S.A. 74-50,102 et seq., and amendments thereto, for the same new  
24 employees.

25 (g) (1) Under no circumstances shall the total amount of benefits  
26 received by the aggregate of all expanding businesses, as such term is  
27 defined in K.S.A. 2016 Supp. 74-50,211, and amendments thereto, under  
28 this act exceed \$4,800,000 in the fiscal year commencing on July 1, 2011,  
29 \$6,000,000 in the fiscal year commencing on July 1, 2012, \$12,000,000 in  
30 the fiscal year commencing on July 1, 2013, \$18,000,000 in the fiscal year  
31 commencing on July 1, 2014, \$24,000,000 in the fiscal year commencing  
32 on July 1, 2015, \$30,000,000 in the fiscal year commencing on July 1,  
33 2016, \$36,000,000 in the fiscal year commencing on July 1, 2017, and  
34 \$42,000,000 in any fiscal year commencing on or after July 1, 2018.

35 (2) Under no circumstances shall the total amount of benefits  
36 received by the aggregate of businesses under ~~subsections (e) or (f)~~ of  
37 K.S.A. 2016 Supp. 74-50,212(e) or (f), and amendments thereto, exceed  
38 \$1,200,000 in the fiscal year commencing on July 1, 2012, \$2,400,000 in  
39 the fiscal year commencing on July 1, 2013, \$1,200,000 in the fiscal year  
40 commencing on July 1, 2014, \$1,200,000 in the fiscal year commencing  
41 on July 1, 2015, \$1,200,000 in the fiscal year commencing on July 1,  
42 2016, and \$1,200,000 in the fiscal year commencing on July 1, 2017.

43 (h) The secretary shall adopt rules and regulations necessary to

1 implement and administer the provisions of this act.

2 Sec. 3. K.S.A. 2016 Supp. 74-50,212 and 74-50,213 are hereby  
3 repealed.

4 Sec. 4. This act shall take effect and be in force from and after its  
5 publication in the statute book.