

House Committee on Taxation

Testimony in Support of House Bill 2173

Presented by Eric Stafford, Vice President of Government Affairs

Wednesday, February 10, 2021

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state, and also serves as the state affiliate of the National Retail Federation through our Kansas Retail Council.

The Kansas Chamber appreciates the opportunity to testify in support of House Bill 2173, which would require marketplace facilitators to collect and remit sales tax to the State of Kansas when annual sales into the state exceed \$100,000. Kansas is one of three states still in need of legislative action on this matter.

If you recall, in June 2018, the U.S. Supreme Court case *South Dakota v. Wayfair* was a monumental decision that granted states the ability to collect sales tax for online purchases, with some restrictions. The Court provided a checklist of factors present in South Dakota law that strongly suggested why it would be constitutional under this standard:

1. Safe harbor: Exclude “those who transact only limited business” in the state. (South Dakota’s is \$100,000 in sales or 200 transactions.) **(SB 50 only contains the \$100,000 in sales threshold)**
2. No retroactive collection.
3. Single state-level administration of all sales taxes in the state.
4. Uniform definitions of products and services.
5. Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
6. Software: access to sales tax administration software provided by the state.
7. Immunity: sellers who use the software are not liable for errors derived from relying on it.

(Items three through seven are accomplished as Kansas is a participating state of the streamlined sales tax agreement)

In August 2019, Governor Kelly issued an Executive Order effective October 1, 2019, requiring all out-of-state retailers to collect and remit sales tax to the state. Lacking from this executive order is item #1 from the Wayfair checklist- a safe harbor provision for those conducting limited business in the state. Upon the announcement of the Executive Order, the Tax Foundation wrote:

“Kansas just unveiled the most aggressive remote sales tax collections regime in the country, and it did so without adopting any new, post-Wayfair legislation. The new requirements, set out in a [Department of Revenue notice](#), obligate all remote sellers with any transactions in Kansas to begin collecting and remitting sales taxes by October, no matter how small the company or how few Kansas sales they have. The new guidance challenges the emerging consensus on remote sales tax collections and raises legal issues most states have been eager to avoid.”

HB 2173 addresses the compliance issue which Kansas potentially faces without legislative action. The bill before you is a slightly different version of marketplace facilitator legislation than what we've had in the past and complies with the Court's *Wayfair* checklist. The bill is largely based off model language from the National Conference of State Legislators (NCSL), which has been adopted and supported by the retail industry, as well as the telecom industry (more on telecom issues shortly).

The variation of language from the NCSL model bill included in HB 2173 was the inclusion of language dealing with transient guest taxes for app-based services such as Airbnb, and VRBO. Kansas law requires collection of sales tax on the rental of rooms or lodging, or other sleeping accommodations. According to the Department of Revenue website, "The guest tax applies when there are more than two bedrooms furnished for the accommodations of guests and when the room is rented for 28 consecutive days or less." SB 50 extends existing Kansas law to short-term, app-based rental services, much like the rest of the bill applies sales tax to remote sellers. This bill is not imposing a new tax.

HB 2173 also strikes outdated "click through nexus" statutes which were passed in 2013 as this issue was gaining more attention nationally.

Prepaid Wireless 911 Fees

New to the bill last year (HB 2513) was a provision dealing with the collection of prepaid wireless 911 fees. We had a split among our membership on the effective date of that provision. During the April break, we convened a call between our retail and telecom members to find agreement on the language and effective date of this section. Ultimately, through the summer and fall, we were unable to find consensus for the date which the collection of prepaid 911 fees would go into effect.

The bill is drafted for July 1, 2022. Most everyone is accepting of the date in the Senate version (SB 50), but one member is asking for July 1, 2022 because they don't believe they can get their systems updated in time to accommodate the January time frame. We have done what we can to find agreement, but will leave it up to the Legislature to finalize the effective date that provision.

We will respectfully ask while there is not 100% agreement on the effective date of the 911 fee provision, that we do not lose the chance to pass the sales tax component of the bill. Kansas MUST act this year on the marketplace facilitator legislation.

In closing, the passage of House Bill 2173 will place Kansas in compliance with the *Wayfair* decision. We appreciate the opportunity to testify in support of House Bill 2173, and I am happy to answer any questions at the appropriate time.