

HOUSE BILL No. 2547

By Committee on Taxation

1-26

1 AN ACT concerning the promoting employment across Kansas act;
2 pertaining to qualifications for benefits under the act; Kansas small
3 businesses; amending K.S.A. 2011 Supp. 74-50,211 and 74-50,212 and
4 repealing the existing sections.
5

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

7 Section 1. K.S.A. 2011 Supp. 74-50,211 is hereby amended to read as
8 follows: 74-50,211. As used in this act, unless the context otherwise
9 requires:

10 (a) "Act" means the provisions of K.S.A. 2011 Supp. 74-50,210
11 through 74-50,219, and amendments thereto.

12 (b) "County median wage" means the median wage paid to
13 employees located in the county where the qualified company intends to
14 employ new employees as reported by the department of labor in its
15 annual report for the previous year.

16 (c) "Department" means the department of commerce.

17 (d) "Expanding business" means the expansion of an existing
18 business facility, office, department or other operation located in the state
19 of Kansas and locating in Kansas the jobs directly related to such business
20 facility, office, department or other operation.

21 (e) "High-impact project" means a business development project for
22 which the qualified company shall meet the requirements of subsection (c)
23 of K.S.A. 2011 Supp. 74-50,212, and amendments thereto.

24 (f) "Metropolitan county" means the county of Douglas, Johnson,
25 Leavenworth, Sedgwick, Shawnee or Wyandotte.

26 (g) "NAICS" means the North American industry classification
27 system.

28 (h) "NAICS code industry average wage" means the average wage
29 paid to employees of companies classified in the same NAICS code as the
30 qualified company for the region in which the qualified company intends
31 to employ new employees as reported by the department of labor in its
32 annual report for the previous year.

33 (i) "New business" means a facility, plant, division, office,
34 department, production line, production shift or other business operations
35 of a company that was not doing business in Kansas prior to the
36 submission of an application for benefits under this act and that provides

1 documentation of such to the satisfaction of the secretary.

2 (j) "New employee" means a person newly employed by the qualified
3 company in the qualified company's business operating in Kansas during
4 the taxable year for which benefits are sought under K.S.A. 2011 Supp.
5 74-50,212, and amendments thereto. A person shall be deemed to be so
6 engaged if such person performs duties in Kansas in connection with the
7 operation of the Kansas business on: (1) A regular, full-time basis; or (2) a
8 part-time basis, provided such person is customarily performing such
9 duties at least 20 hours per week throughout the taxable year. Employees
10 performing functions directly related to a relocating, expanding, or new
11 business facility, office, department or other operation shall be considered
12 new employees.

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

15 (l) (1) (A) "Qualified company" means any for-profit corporation,
16 partnership or other entity making available to its full-time employees
17 adequate health insurance coverage and paying at least 50% of the
18 premium for such health insurance, which meets the requirements of
19 K.S.A. 2011 Supp. 74-50,212, and amendments thereto, and submits an
20 application for benefits meeting requirements established by the secretary.

21 (B) "Qualified company" also includes any not-for-profit corporation
22 which locates within the state of Kansas a regional, national or
23 international headquarters and which meets the requirements of
24 subparagraph (A).

25 (2) "Qualified company" shall not include any corporation,
26 partnership or other entity: (A) Which is identified by any of the following
27 NAICS code groups, sectors or subsectors:

28 (i) Industry group 7132 or 8131;

29 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);

30 or

31 (iii) subsector 722;

32 (B) which is a bioscience company, as defined in K.S.A. 2011 Supp.
33 74-99b33, and amendments thereto;

34 (C) which is delinquent in the payment of any nonprotested taxes or
35 any other amounts due to the federal government, the state of Kansas or
36 any other political taxing subdivision; or

37 (D) which has filed for or has publicly announced its intention to file
38 for bankruptcy protection.

39 (3) Notwithstanding any provision of this subsection, except for
40 paragraphs (2)(B), (C) and (D), a company may be deemed a qualified
41 company if such company's headquarters or administrative offices located
42 in this state serve an international or multi-state territory and such
43 company meets the requirements of K.S.A. 2011 Supp. 74-50,212, and

1 amendments thereto.

2 (m) "Retained job" means an existing job which will be lost without
3 participation by the employer under the provisions of the promoting
4 employment across Kansas act.

5 (n) "Secretary" means the secretary of the department of commerce.

6 (o) "*Kansas small business*" means a qualified company located in
7 Kansas that has 100 or fewer employees.

8 Sec. 2. K.S.A. 2011 Supp. 74-50,212 is hereby amended to read as
9 follows: 74-50,212. (a) In order to qualify for benefits under this act a
10 qualified company shall:

11 (1) Relocate to Kansas an existing business facility, office,
12 department or other operation doing business outside the state of Kansas
13 and locate the jobs directly related to such relocated business facility,
14 office, department or other operation in 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; or

18 (3) expand an existing business facility, office, department or other
19 operation located in the state of Kansas and locate the jobs directly related
20 to such business facility, office, department or other operation in Kansas,
21 except that no payroll withholding taxes shall be retained prior to January
22 1, 2012.

23 A qualified company may utilize or contract with a third-party
24 employer to perform services whereby the third-party employer serves as
25 the legal employer of the new employees providing services to the
26 qualified company and such services are performed in Kansas and the
27 third-party employer and the new employees are subject to the Kansas
28 withholding and declaration of estimated tax act.

29 (b) Any qualified company, approved by the secretary for benefits
30 pursuant to paragraph (a), that locates its business operation in a
31 metropolitan county and will hire at least 10 new employees within two
32 years from the date the qualified company enters into an agreement with
33 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
34 thereto, or any qualified company, approved by the secretary for benefits
35 pursuant to paragraph (a), that locates its business operation in a non-
36 metropolitan county and will hire at least five new employees within two
37 years from the date the qualified company enters into an agreement with
38 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
39 thereto, shall: (1) Be eligible to retain 95% of the qualified company's
40 Kansas payroll withholding taxes for such new employees being paid the
41 county median wage or higher for a period of up to:

42 (A) Five years if the median wage paid to the new employees is equal
43 to at least 100% of the county median wage;

1 (B) six years if the median wage paid to the new employees is equal
2 to at least 110% of the county median wage;

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

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

10 (c) Any qualified company, approved by the secretary for benefits
11 pursuant to paragraph (a), that engages in a high-impact project whereby
12 the qualified company will hire at least 100 new employees within two
13 years from the date the qualified company enters into an agreement with
14 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
15 thereto, shall be eligible to retain 95% of the qualified company's Kansas
16 payroll withholding taxes for such new employees being paid the county
17 median wage or higher for a period of up to:

18 (1) Seven years if the median wage paid to the new employees is
19 equal to at least 100% of the county median wage;

20 (2) eight years if the median wage paid to the new employees is equal
21 to at least 110% of the county median wage;

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

24 (4) ten years if the median wage paid to the new employees is equal
25 to at least 140% of the county median wage.

26 (d) In the event that a qualified company contracts with a third party
27 as described in subsection (a), the third party shall remit payments equal to
28 the amount of Kansas payroll withholding taxes the qualified company is
29 eligible to retain under this section to the qualified company, and report
30 such amount to the department of revenue as required pursuant to
31 subsection (a) of K.S.A. 2011 Supp. 74-50,214, and amendments thereto.

32 (e) Commencing January 1, 2013, and ending December 31, 2014,
33 any company, which meets the criteria provided pursuant to the provisions
34 of K.S.A. 2011 Supp. 74-50,211, and amendments thereto, that retains the
35 employees of an existing business unit located in Kansas and enters into an
36 agreement with the secretary pursuant to K.S.A. 2011 Supp. 74-50,213,
37 and amendments thereto, shall be eligible to retain 95% of the qualified
38 company's Kansas payroll withholding taxes for such employees for a
39 period of up to five years.

40 (f) (1) Commencing January 1, 2013, and ending December 31, 2014,
41 pursuant to the provisions of subsection (e), the secretary of commerce, in
42 the secretary's sole determination, may provide the benefits of the
43 promoting employment across Kansas act for situations where it is deemed

1 necessary by the secretary that the state of Kansas provide incentives for a
2 company or its operations currently located in Kansas to remain in Kansas
3 so as to keep its retained jobs. The secretary shall establish and verify that
4 a prospective company has competitive alternatives that it is seriously
5 considering and that a company's relocation may be imminent.
6 Furthermore, the secretary shall assess:

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

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

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

14 (2) Effective January 1, 2013, and ending December 31, 2014, the
15 secretary may use the promoting employment across Kansas act in
16 conjunction with other economic development programs to develop a
17 retention package.

18 (g) The provisions of this act as in effect prior to the effective date of
19 this act shall apply to employers who have entered into agreements with
20 the secretary prior to July 1, 2011. The provisions of this act shall apply to
21 employers who enter into agreements with the secretary on and after July
22 1, 2011.

23 *(h) A Kansas small business, approved by the secretary for benefits*
24 *pursuant to subsection (a)(3), shall be eligible to retain 95% of the Kansas*
25 *small business' payroll withholding taxes for a period up to three years for*
26 *each addition employee, if that employee represents an increase in the*
27 *Kansas small business' statewide employment over its highest level of*
28 *employment for the previous five-year period. Any reduction in*
29 *employment by a Kansas small business utilizing the benefit under this*
30 *subsection shall result in a corresponding reduction of such benefit*
31 *allowed.*

32 Sec. 3. K.S.A. 2011 Supp. 74-50,211 and 74-50,212 are hereby
33 repealed.

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

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