

**SENATE BILL No. 262**

By Committee on Commerce

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1 AN ACT concerning the promoting employment across Kansas act;  
2 amending K.S.A. 2013 Supp. 74-50,212 and 74-50,213 and repealing  
3 the existing sections.  
4

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

6 Section 1. K.S.A. 2013 Supp. 74-50,212 is hereby amended to read as  
7 follows: 74-50,212. (a) In order to qualify for benefits under this act a  
8 qualified company shall:

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

13 (2) locate a new business facility, office, department or other  
14 operation in Kansas and locate the jobs directly related to such business  
15 facility, office, department or other operation in Kansas; or

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

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

27 (b) Any qualified company, approved by the secretary for benefits  
28 pursuant to paragraph (a), that locates its business operation in a  
29 metropolitan county and will hire at least 10 new employees within two  
30 years from the date the qualified company enters into an agreement with  
31 the secretary pursuant to K.S.A. 2013 Supp. 74-50,213, and amendments  
32 thereto, or any qualified company, approved by the secretary for benefits  
33 pursuant to paragraph (a), that locates its business operation in a non-  
34 metropolitan county and will hire at least five new employees within two  
35 years from the date the qualified company enters into an agreement with  
36 the secretary pursuant to K.S.A. 2013 Supp. 74-50,213, and amendments

1 thereto, shall: (1) Be eligible to retain 95% of the qualified company's  
2 Kansas payroll withholding taxes for such new employees being paid the  
3 county median wage or higher for a period of up to:

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

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

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

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

15 (c) Any qualified company, approved by the secretary for benefits  
16 pursuant to paragraph (a), that engages in a high-impact project whereby  
17 the qualified company will hire at least 100 new employees within two  
18 years from the date the qualified company enters into an agreement with  
19 the secretary pursuant to K.S.A. 2013 Supp. 74-50,213, and amendments  
20 thereto, shall be eligible to retain 95% of the qualified company's Kansas  
21 payroll withholding taxes for such new employees being paid the county  
22 median wage or higher for a period of up to:

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

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

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

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

31 (d) In the event that a qualified company contracts with a third party  
32 as described in subsection (a), the third party shall remit payments equal to  
33 the amount of Kansas payroll withholding taxes the qualified company is  
34 eligible to retain under this section to the qualified company, and report  
35 such amount to the department of revenue as required pursuant to  
36 subsection (a) of K.S.A. 2013 Supp. 74-50,214, and amendments thereto.

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

1 period of up to five years.

2 (f) (1) Commencing January 1, 2013, and ending December 31, 2014,  
3 pursuant to the provisions of subsection (e), the secretary of commerce, in  
4 the secretary's sole determination, may provide the benefits of the  
5 promoting employment across Kansas act for situations where it is deemed  
6 necessary by the secretary that the state of Kansas provide incentives for a  
7 company or its operations currently located in Kansas to remain in Kansas  
8 so as to keep its retained jobs. The secretary shall establish and verify that  
9 a prospective company has competitive alternatives that it is seriously  
10 considering and that a company's relocation may be imminent.  
11 Furthermore, the secretary shall assess:

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

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

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

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

23 (g) The provisions of this act as in effect prior to the effective date of  
24 this act shall apply to employers who have entered into agreements with  
25 the secretary prior to July 1, 2011. The provisions of this act shall apply to  
26 employers who enter into agreements with the secretary on and after July  
27 1, 2011.

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

34 Sec. 2. K.S.A. 2013 Supp. 74-50,213 is hereby amended to read as  
35 follows: 74-50,213. (a) Any qualified company meeting the requirements  
36 of K.S.A. 2013 Supp. 74-50,212, and amendments thereto, may apply to  
37 the secretary for benefits under this act. The application shall be submitted  
38 on a form and in a manner prescribed by the secretary, and shall include:  
39 (1) Evidence that the applicant is a qualified company; and (2) evidence  
40 that the applicant meets the requirements of K.S.A. 2013 Supp. 74-50,212,  
41 and amendments thereto.

42 (b) The secretary may either approve or disapprove the application.  
43 Any qualified company whose application is approved shall be eligible to

1 receive benefits under this act as of the date such qualified company enters  
2 into an agreement with the secretary in accordance with this section.

3 (c) Upon approval of an application for benefits under this act, the  
4 secretary may enter into an agreement with the qualified company for  
5 benefits under this act. If necessary, the secretary may also enter into an  
6 agreement with any third party described in subsection (a) of K.S.A. 2013  
7 Supp. 74-50,212, and amendments thereto, or such third party may be a  
8 party to the agreement between the qualified company and the secretary.  
9 The agreement shall commit the secretary to certify to the secretary of  
10 revenue: (1) That the qualified company is eligible to receive benefits  
11 under this act; (2) the number of new employees hired by the qualified  
12 company; and (3) the amount of gross wages being paid to each new  
13 employee.

14 (d) The agreement between the qualified company and the secretary  
15 shall be entered into before any benefits may be provided under this act,  
16 and shall specify that should the qualified company fail to comply with the  
17 terms and conditions set forth in the agreement, or fails to comply with the  
18 provisions set forth in this act, the secretary may terminate the agreement,  
19 and the qualified company shall not be entitled to any further benefits  
20 provided under this act and shall be required to remit to the state an  
21 amount equal to the aggregate Kansas payroll withholding taxes retained  
22 by the qualified company, or remitted to the qualified company by a third  
23 party, pursuant to this act as of the date the agreement is terminated.

24 (e) A qualified company that is already receiving benefits pursuant to  
25 this act may apply to the secretary for additional benefits if the qualified  
26 company meets the requirements of K.S.A. 2013 Supp. 74-50,212, and  
27 amendments thereto.

28 (f) A qualified company seeking benefits shall be allowed to  
29 participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,  
30 and amendments thereto, but shall not be allowed to participate in any  
31 other program in which any portion of such qualified company's Kansas  
32 payroll withholding taxes have been pledged to finance indebtedness or  
33 transferred to or for the benefit of such company. A qualified company  
34 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-  
35 32,160a or 79-32,182b, and amendments thereto, if such credits would  
36 otherwise be earned for the hiring of new employees and the qualified  
37 company has retained any Kansas payroll withholding taxes from wages of  
38 such employees. A qualified company shall not be eligible to receive  
39 benefits under K.S.A. 2013 Supp. 74-50,212, and amendments thereto, and  
40 under K.S.A. 74-50,102 et seq., and amendments thereto, for the same new  
41 employees.

42 (g) (1) (A) *Except as provided in subparagraph (B)*, under no  
43 circumstances shall the total amount of benefits authorized or granted to

1 the aggregate of all expanding businesses, as such term is defined in  
2 K.S.A. 2013 Supp. 74-50,211, and amendments thereto, under this act  
3 exceed \$4,800,000 in the fiscal year commencing on July 1, 2011, and  
4 \$6,000,000 in any fiscal year commencing on or after July 1, 2012.

5 *(B) (i) For each fiscal year commencing on and after July 1, 2014,*  
6 *the total amount of benefits authorized or granted to the aggregate of all*  
7 *expanding businesses, as such term is defined in K.S.A. 2013 Supp. 74-*  
8 *50,211, and amendments thereto, under this act shall not exceed an*  
9 *amount equal to the total amount of benefits authorized and granted in the*  
10 *aggregate in the preceding fiscal years commencing on or after July 1,*  
11 *2013, in addition to the maximum total amount of benefits authorized or*  
12 *granted in the aggregate of all expanding businesses in the current fiscal*  
13 *year. For the purposes of this subsection, the amount of benefits*  
14 *authorized in fiscal years commencing on and after July 1, 2013, shall be*  
15 *deemed to be \$6,000,000.*

16 *(ii) The amount of any benefits under this subsection which remain in*  
17 *any fiscal year commencing on and after July 1, 2014, which are unused*  
18 *or unallocated shall carry over and may be used in any subsequent fiscal*  
19 *year.*

20 (2) Under no circumstances shall the total amount of benefits  
21 authorized or granted to the aggregate of businesses under subsections (e)  
22 or (f) of K.S.A. 2013 Supp. 74-50,212, and amendments thereto, exceed  
23 \$1,200,000 in the fiscal year commencing on July 1, 2012, \$2,400,000 in  
24 the fiscal year commencing on July 1, 2013, and \$1,200,000 in the fiscal  
25 year commencing on July 1, 2014.

26 (h) The secretary shall adopt rules and regulations necessary to  
27 implement and administer the provisions of this act.

28 Sec. 3. K.S.A. 2013 Supp. 74-50,212 and 74-50,213 are hereby  
29 repealed.

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