

HOUSE BILL No. 2086

By Committee on Taxation

1-25

1 AN ACT concerning taxation; relating to mechanical amusement devices,
2 tax stamps; sales tax exemptions; amending K.S.A. 2018 Supp. 79-
3 3603 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Sections 1 through 10, and amendments thereto, shall
7 be known and may be cited as the Kansas mechanical amusement device
8 tax act.

9 New Sec. 2. As used in section 1 et seq., and amendments thereto:

10 (a) "Director" means the director of taxation.

11 (b) "Distributor" means any person who sells, leases or delivers
12 possession or custody of a mechanical amusement device to operators for a
13 consideration either directly or indirectly received.

14 (c) "Mechanical amusement device" means any machine that, upon
15 insertion of a coin, currency, credit card or substitute into the machine,
16 operates or may be operated or used for a game, contest or amusement of
17 any description, such as, by way of example, but not by way of limitation,
18 pinball games, shuffleboard, bowling games, radio-ray rifle games,
19 baseball, football, racing, boxing games, coin-operated musical devices
20 and coin-operated pool tables. The term does not mean vending machines
21 that disperse tangible personal property, devices located in private homes
22 for private use, lottery machines or electronic gaming machines as defined
23 by K.S.A. 74-8702, and amendments thereto, or devices that are
24 mechanically constructed in a manner that would render their operation
25 illegal under the laws of the state of Kansas.

26 (d) "Operator" means any person who operates a place of business in
27 which a mechanical amusement device owned by such person is physically
28 located or any person who places and who either directly or indirectly
29 controls or manages any mechanical amusement device.

30 (e) "Person" means any individual, partnership, society, association,
31 joint-stock company, corporation, estate, receiver, trustee, assignee, referee
32 or any other person acting in a fiduciary or representative capacity,
33 whether appointed by a court or otherwise, or any combination of
34 individuals.

35 New Sec. 3. (a) Beginning on January 1, 2020, an operator shall
36 obtain an annual license from the director, as provided by this act,

1 permitting such person to operate mechanical amusement devices in the
2 state of Kansas. Licenses shall be issued by the director upon application
3 for the license made on forms furnished by the director containing such
4 information as the director may require, subscribed to by the applicant or
5 the applicant's authorized designee. The application for a license under this
6 section shall be filed on or before January 1 of each year, and no license
7 fee shall be required.

8 (b) An application for a license may be refused to: (1) A person who
9 is not of good character and reputation in the community in which the
10 applicant resides; (2) a person who has been convicted of a felony under
11 the laws of any state or the United States; or (3) a person who has been
12 convicted of being the proprietor of a gambling house, or of any other
13 crime or misdemeanor opposed to decency and morality under the laws of
14 any state or the United States. If the applicant for a license under this
15 section is a corporation whose majority of stockholders could not obtain a
16 license, then such corporation shall not be issued a license. If the applicant
17 is an individual, the application shall include the applicant's social security
18 number.

19 (c) Procuring a license shall constitute sufficient contact with this
20 state for the exercise of personal jurisdiction over such person in any
21 action arising out of the operation of mechanical amusement devices in
22 this state.

23 New Sec. 4. Beginning on January 1, 2020, a distributor shall obtain
24 an annual license from the director permitting such person to sell, lease or
25 deliver possession or custody of a mechanical amusement device within
26 the state of Kansas. Licenses shall be issued by the director upon
27 application for the license made on forms furnished by the director
28 containing such information as the director may require, subscribed to by
29 the applicant or the applicant's authorized designee. Licenses shall be
30 issued in the same manner and be subject to the same limitations as an
31 operator's license issued under section 3, and amendments thereto.

32 New Sec. 5. (a) Beginning on January 1, 2020, there is hereby
33 imposed a tax upon all mechanical amusement devices operated within the
34 state of Kansas for profit or gain, either directly or indirectly received,
35 during the taxable year. Such tax shall be paid by the operator of the
36 mechanical amusement device. The tax shall be paid to the director and
37 shall be due and payable on January 1 of each year on each mechanical
38 amusement device in operation on that date, except that no tax shall be
39 paid pursuant to this act unless the sales or use tax has already been paid
40 on the purchase of such device. For every machine or device put into
41 operation on a date subsequent to January 1 and that has not been included
42 in computing the tax imposed and levied by this act, the tax shall be due
43 and payable prior to the time the mechanical amusement device is placed

1 in operation.

2 (b) The rate of such tax levied by this section shall be \$50 for each
3 mechanical amusement device for any period beginning on or after
4 January 1, 2020, except that for devices placed in operation after July 1,
5 and before January 1 of each year, the tax shall be \$30 for each device.

6 (c) The director shall remit all moneys received under this subsection
7 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
8 and amendments thereto. Upon receipt of each such remittance, the state
9 treasurer shall deposit the entire amount in the state treasury to the credit
10 of the state general fund.

11 New Sec. 6. The tax levied and imposed by section 5, and
12 amendments thereto, shall be in addition to any and all taxes or fees of any
13 form whatsoever now imposed by the state of Kansas or any of its
14 subdivisions upon the business of operating or distributing mechanical
15 amusement devices as defined by section 2, and amendments thereto.
16 Nonpayment of the taxes or fees due and owing on or before the licensing
17 date of each year shall render the exemption provided by K.S.A. 79-
18 3603(f), and amendments thereto, inapplicable and the particular machines'
19 or devices shall then be subject to all the provisions of the Kansas retailers'
20 sales tax act, including any penalty provisions pertaining to the owner or
21 operator of such machines or devices.

22 New Sec. 7. The payment of the tax imposed by this act shall be
23 evidenced by indicia of tax payment, as designed by the director, affixed to
24 each mechanical amusement device. The director shall adopt a uniform
25 system of affixing and displaying such evidence of tax payment.

26 New Sec. 8. (a) Any person who places a mechanical amusement
27 device in operation in the state of Kansas without the necessary indicia of
28 tax payment being placed conspicuously upon it or without having
29 obtained the necessary license shall be subject to an administrative penalty
30 of \$75 for each violation.

31 (b) Any mechanical amusement device that does not have the
32 necessary indicia of tax payment conspicuously displayed upon it shall be
33 subject to being sealed by the director or the director's designee. If such
34 seal is broken prior to payment of the tax levied by section 5, and
35 amendments thereto, upon such device, the device shall be subject to
36 forfeiture and sale by the director.

37 (c) Any person violating this act shall be guilty of a misdemeanor,
38 and the person shall be fined not less than \$200. Each day on which any
39 person engages in or conducts the business of operating or distributing a
40 mechanical amusement device without having paid the tax or obtained the
41 required license as provided shall constitute a separate offense.

42 New Sec. 9. Prosecutions for any violation of sections 1 through 10,
43 and amendments thereto, shall be brought by the attorney general or

1 county attorney in the county in which the violation occurs. Any
2 prosecution for the violation of any of the provisions of sections 1 through
3 10, and amendments thereto, shall be instituted within three years after the
4 commission of the offense.

5 New Sec. 10. The administration of the provisions of sections 1
6 through 10, and amendments thereto, is hereby vested in the director. The
7 director may adopt any rules and regulations necessary to administer and
8 enforce the provisions of this act.

9 Sec. 11. K.S.A. 2018 Supp. 79-3603 is hereby amended to read as
10 follows: 79-3603. For the privilege of engaging in the business of selling
11 tangible personal property at retail in this state or rendering or furnishing
12 any of the services taxable under this act, there is hereby levied and there
13 shall be collected and paid a tax at the rate of 6.15%, and commencing
14 July 1, 2015, at the rate of 6.5%. Within a redevelopment district
15 established pursuant to K.S.A. 74-8921, and amendments thereto, there is
16 hereby levied and there shall be collected and paid an additional tax at the
17 rate of 2% until the earlier of the date the bonds issued to finance or
18 refinance the redevelopment project have been paid in full or the final
19 scheduled maturity of the first series of bonds issued to finance any part of
20 the project upon:

21 (a) The gross receipts received from the sale of tangible personal
22 property at retail within this state;

23 (b) the gross receipts from intrastate, interstate or international
24 telecommunications services and any ancillary services sourced to this
25 state in accordance with K.S.A. 2018 Supp. 79-3673, and amendments
26 thereto, except that telecommunications service does not include: (1) Any
27 interstate or international 800 or 900 service; (2) any interstate or
28 international private communications service as defined in K.S.A. 2018
29 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice
30 data service; (4) any telecommunication service to a provider of
31 telecommunication services which will be used to render
32 telecommunications services, including carrier access services; or (5) any
33 service or transaction defined in this section among entities classified as
34 members of an affiliated group as provided by section 1504 of the federal
35 internal revenue code of 1986, as in effect on January 1, 2001;

36 (c) the gross receipts from the sale or furnishing of gas, water,
37 electricity and heat, which sale is not otherwise exempt from taxation
38 under the provisions of this act, and whether furnished by municipally or
39 privately owned utilities, except that, on and after January 1, 2006, for
40 sales of gas, electricity and heat delivered through mains, lines or pipes to
41 residential premises for noncommercial use by the occupant of such
42 premises, and for agricultural use and also, for such use, all sales of
43 propane gas, the state rate shall be 0%; and for all sales of propane gas, LP

1 gas, coal, wood and other fuel sources for the production of heat or
2 lighting for noncommercial use of an occupant of residential premises, the
3 state rate shall be 0%, but such tax shall not be levied and collected upon
4 the gross receipts from: (1) The sale of a rural water district benefit unit;
5 (2) a water system impact fee, system enhancement fee or similar fee
6 collected by a water supplier as a condition for establishing service; or (3)
7 connection or reconnection fees collected by a water supplier;

8 (d) the gross receipts from the sale of meals or drinks furnished at any
9 private club, drinking establishment, catered event, restaurant, eating
10 house, dining car, hotel, drugstore or other place where meals or drinks are
11 regularly sold to the public;

12 (e) the gross receipts from the sale of admissions to any place
13 providing amusement, entertainment or recreation services including
14 admissions to state, county, district and local fairs, but such tax shall not
15 be levied and collected upon the gross receipts received from sales of
16 admissions to any cultural and historical event which occurs triennially;

17 (f) the gross receipts from the operation of any coin-operated device
18 dispensing or providing tangible personal property, amusement or other
19 services except: (1) Laundry services, whether automatic or manually
20 operated; and (2) on and after January 1, 2020, mechanical amusement
21 devices, as defined by section 2, and amendments thereto;

22 (g) the gross receipts from the service of renting of rooms by hotels,
23 as defined by K.S.A. 36-501, and amendments thereto, or by
24 accommodation brokers, as defined by K.S.A. 12-1692, and amendments
25 thereto, but such tax shall not be levied and collected upon the gross
26 receipts received from sales of such service to the federal government and
27 any agency, officer or employee thereof in association with the
28 performance of official government duties;

29 (h) the gross receipts from the service of renting or leasing of tangible
30 personal property except such tax shall not apply to the renting or leasing
31 of machinery, equipment or other personal property owned by a city and
32 purchased from the proceeds of industrial revenue bonds issued prior to
33 July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through
34 12-1749, and amendments thereto, and any city or lessee renting or leasing
35 such machinery, equipment or other personal property purchased with the
36 proceeds of such bonds who shall have paid a tax under the provisions of
37 this section upon sales made prior to July 1, 1973, shall be entitled to a
38 refund from the sales tax refund fund of all taxes paid thereon;

39 (i) the gross receipts from the rendering of dry cleaning, pressing,
40 dyeing and laundry services except laundry services rendered through a
41 coin-operated device whether automatic or manually operated;

42 (j) the gross receipts from the rendering of the services of washing
43 and washing and waxing of vehicles;

1 (k) the gross receipts from cable, community antennae and other
2 subscriber radio and television services;

3 (l) (1) except as otherwise provided by paragraph (2), the gross
4 receipts received from the sales of tangible personal property to all
5 contractors, subcontractors or repairmen for use by them in erecting
6 structures, or building on, or otherwise improving, altering, or repairing
7 real or personal property.

8 (2) Any such contractor, subcontractor or repairman who maintains
9 an inventory of such property both for sale at retail and for use by them for
10 the purposes described by paragraph (1) shall be deemed a retailer with
11 respect to purchases for and sales from such inventory, except that the
12 gross receipts received from any such sale, other than a sale at retail, shall
13 be equal to the total purchase price paid for such property and the tax
14 imposed thereon shall be paid by the deemed retailer;

15 (m) the gross receipts received from fees and charges by public and
16 private clubs, drinking establishments, organizations and businesses for
17 participation in sports, games and other recreational activities, but such tax
18 shall not be levied and collected upon the gross receipts received from: (1)
19 Fees and charges by any political subdivision, by any organization exempt
20 from property taxation pursuant to K.S.A. 79-201 *Ninth*, and amendments
21 thereto, or by any youth recreation organization exclusively providing
22 services to persons 18 years of age or younger which is exempt from
23 federal income taxation pursuant to section 501(c)(3) of the federal
24 internal revenue code of 1986, for participation in sports, games and other
25 recreational activities; and (2) entry fees and charges for participation in a
26 special event or tournament sanctioned by a national sporting association
27 to which spectators are charged an admission which is taxable pursuant to
28 subsection (e);

29 (n) the gross receipts received from dues charged by public and
30 private clubs, drinking establishments, organizations and businesses,
31 payment of which entitles a member to the use of facilities for recreation
32 or entertainment, but such tax shall not be levied and collected upon the
33 gross receipts received from: (1) Dues charged by any organization exempt
34 from property taxation pursuant to K.S.A. 79-201 *Eighth* and *Ninth*, and
35 amendments thereto; and (2) sales of memberships in a nonprofit
36 organization which is exempt from federal income taxation pursuant to
37 section 501(c)(3) of the federal internal revenue code of 1986, and whose
38 purpose is to support the operation of a nonprofit zoo;

39 (o) the gross receipts received from the isolated or occasional sale of
40 motor vehicles or trailers but not including: (1) The transfer of motor
41 vehicles or trailers by a person to a corporation or limited liability
42 company solely in exchange for stock securities or membership interest in
43 such corporation or limited liability company; (2) the transfer of motor

1 vehicles or trailers by one corporation or limited liability company to
2 another when all of the assets of such corporation or limited liability
3 company are transferred to such other corporation or limited liability
4 company; or (3) the sale of motor vehicles or trailers which are subject to
5 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
6 amendments thereto, by an immediate family member to another
7 immediate family member. For the purposes of paragraph (3), immediate
8 family member means lineal ascendants or descendants, and their spouses.
9 Any amount of sales tax paid pursuant to the Kansas retailers sales tax act
10 on the isolated or occasional sale of motor vehicles or trailers on and after
11 July 1, 2004, which the base for computing the tax was the value pursuant
12 to K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when
13 such amount was higher than the amount of sales tax which would have
14 been paid under the law as it existed on June 30, 2004, shall be refunded to
15 the taxpayer pursuant to the procedure prescribed by this section. Such
16 refund shall be in an amount equal to the difference between the amount of
17 sales tax paid by the taxpayer and the amount of sales tax which would
18 have been paid by the taxpayer under the law as it existed on June 30,
19 2004. Each claim for a sales tax refund shall be verified and submitted not
20 later than six months from the effective date of this act to the director of
21 taxation upon forms furnished by the director and shall be accompanied by
22 any additional documentation required by the director. The director shall
23 review each claim and shall refund that amount of tax paid as provided by
24 this act. All such refunds shall be paid from the sales tax refund fund, upon
25 warrants of the director of accounts and reports pursuant to vouchers
26 approved by the director of taxation or the director's designee. No refund
27 for an amount less than \$10 shall be paid pursuant to this act. In
28 determining the base for computing the tax on such isolated or occasional
29 sale, the fair market value of any motor vehicle or trailer traded in by the
30 purchaser to the seller may be deducted from the selling price;

31 (p) the gross receipts received for the service of installing or applying
32 tangible personal property which when installed or applied is not being
33 held for sale in the regular course of business, and whether or not such
34 tangible personal property when installed or applied remains tangible
35 personal property or becomes a part of real estate, except that no tax shall
36 be imposed upon the service of installing or applying tangible personal
37 property in connection with the original construction of a building or
38 facility, the original construction, reconstruction, restoration, remodeling,
39 renovation, repair or replacement of a residence or the construction,
40 reconstruction, restoration, replacement or repair of a bridge or highway.

41 For the purposes of this subsection:

42 (1) "Original construction" shall mean the first or initial construction
43 of a new building or facility. The term "original construction" shall include

1 the addition of an entire room or floor to any existing building or facility,
2 the completion of any unfinished portion of any existing building or
3 facility and the restoration, reconstruction or replacement of a building,
4 facility or utility structure damaged or destroyed by fire, flood, tornado,
5 lightning, explosion, windstorm, ice loading and attendant winds,
6 terrorism or earthquake, but such term, except with regard to a residence,
7 shall not include replacement, remodeling, restoration, renovation or
8 reconstruction under any other circumstances;

9 (2) "building" shall mean only those enclosures within which
10 individuals customarily are employed, or which are customarily used to
11 house machinery, equipment or other property, and including the land
12 improvements immediately surrounding such building;

13 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
14 well, feedlot or any conveyance, transmission or distribution line of any
15 cooperative, nonprofit, membership corporation organized under or subject
16 to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or
17 municipal or quasi-municipal corporation, including the land
18 improvements immediately surrounding such facility;

19 (4) "residence" shall mean only those enclosures within which
20 individuals customarily live;

21 (5) "utility structure" shall mean transmission and distribution lines
22 owned by an independent transmission company or cooperative, the
23 Kansas electric transmission authority or natural gas or electric public
24 utility; and

25 (6) "windstorm" shall mean straight line winds of at least 80 miles per
26 hour as determined by a recognized meteorological reporting agency or
27 organization;

28 (q) the gross receipts received for the service of repairing, servicing,
29 altering or maintaining tangible personal property which when such
30 services are rendered is not being held for sale in the regular course of
31 business, and whether or not any tangible personal property is transferred
32 in connection therewith. The tax imposed by this subsection shall be
33 applicable to the services of repairing, servicing, altering or maintaining an
34 item of tangible personal property which has been and is fastened to,
35 connected with or built into real property;

36 (r) the gross receipts from fees or charges made under service or
37 maintenance agreement contracts for services, charges for the providing of
38 which are taxable under the provisions of subsection (p) or (q);

39 (s) on and after January 1, 2005, the gross receipts received from the
40 sale of prewritten computer software and the sale of the services of
41 modifying, altering, updating or maintaining prewritten computer
42 software, whether the prewritten computer software is installed or
43 delivered electronically by tangible storage media physically transferred to

1 the purchaser or by load and leave;

2 (t) the gross receipts received for telephone answering services;

3 (u) the gross receipts received from the sale of prepaid calling service
4 and prepaid wireless calling service as defined in K.S.A. 2018 Supp. 79-
5 3673, and amendments thereto;

6 (v) all sales of bingo cards, bingo faces and instant bingo tickets by
7 licensees under K.S.A. 2018 Supp. 75-5171 et seq., and amendments
8 thereto, shall be exempt from taxes imposed pursuant to this section; and

9 (w) all sales of charitable raffle tickets in accordance with K.S.A.
10 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt
11 from taxes imposed pursuant to this section.

12 Sec. 12. K.S.A. 2018 Supp. 79-3603 is hereby repealed.

13 Sec. 13. This act shall take effect and be in force from and after its
14 publication in the statute book.