

SENATE BILL No. 104

By Select Committee on Federal Tax Code Implementation

2-5

1 AN ACT concerning income taxation; enacting the Kansas taxpayer  
2 protection act; relating to paid tax return preparers; requiring a  
3 signature and tax identification number on returns and claims;  
4 authorizing actions by the secretary of revenue to enjoin certain  
5 conduct.

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

8 Section 1. The provisions of sections 1 through 6, and amendments  
9 thereto, shall be known and may be cited as the Kansas taxpayer protection  
10 act.

11 Sec. 2. As used in this act:

12 (a) "Paid tax return preparer" means any person who prepares or  
13 substantially prepares for compensation, or who employs one or more  
14 persons who prepare or substantially prepare for compensation, any  
15 income tax return or claim for refund, required to be filed pursuant to  
16 K.S.A. 79-3201 et seq., and amendments thereto. "Paid tax return  
17 preparer" does not include ~~a person regulated under chapter 1 of the~~  
18 ~~Kansas Statutes Annotated, and amendments thereto, or~~ *the following:*

19 *(1) An individual licensed as a certified public accountant in this*  
20 *state under K.S.A. 1-302b or 1-322, and amendments thereto;*

21 *(2) an individual licensed as a certified public accountant in*  
22 *another licensing jurisdiction and practicing in this state under K.S.A.*  
23 *1-302b or 1-322, and amendments thereto;*

24 *(3) an individual employed by a firm licensed in this state under*  
25 *K.S.A. 1-308, and amendments thereto, and preparing a return under*  
26 *the supervision of an individual described in paragraph (1) or (2); or*

27 *(4) any members of the public accountants association of Kansas.*

28 (b) "Secretary" means secretary of the Kansas department of revenue.

29 Sec. 3. (a) On and after January 1, 2020, any income tax return or  
30 claim for refund prepared or substantially prepared by a paid tax return  
31 preparer shall be signed by the paid tax return preparer and shall bear the  
32 paid tax return preparer's federal internal revenue service preparer tax  
33 identification number. Any paid tax return preparer who fails to sign the  
34 income tax return or claim for refund or who fails to provide the preparer's  
35 federal internal revenue service preparer tax identification number shall  
36 pay a civil penalty of \$50 for each such failure to the Kansas department

1 of revenue, unless it can be shown that the failure was due to reasonable  
2 cause and not willful or reckless conduct. The penalty imposed on any  
3 paid tax return preparer with respect to returns or claims for refund filed  
4 during any calendar year shall not exceed \$25,000 per paid tax return  
5 preparer.

6 (b) The penalty shall be imposed pursuant to this section upon the  
7 written order of the secretary or the secretary's designee to the paid tax  
8 return preparer who committed the violation. Such order shall state the  
9 violation, the penalty to be imposed and the right of the paid tax return  
10 preparer to appeal the order. Such order shall be subject to appeal and  
11 review in the manner provided by the Kansas administrative procedure act.

12 (c) Any penalty collected pursuant to this section shall be remitted to  
13 the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
14 and amendments thereto. Upon receipt of each such remittance, the state  
15 treasurer shall deposit the entire amount in the state treasury to the credit  
16 of the state general fund.

17 Sec. 4. (a) The secretary or the secretary's designee is hereby  
18 authorized to enjoin any person from engaging in conduct described in  
19 subsection (b) or from further action as a paid tax return preparer under the  
20 provisions of the Kansas taxpayer protection act who is found to be in  
21 violation of this act and the secretary or the secretary's designee shall be  
22 entitled, in any proceeding brought for such purpose to have an order  
23 restraining such person from engaging in conduct in violation of the  
24 provisions of this act, and no bond shall be required for any such  
25 restraining order, nor for any temporary or permanent injunction issued in  
26 such proceedings. The secretary may commence suit in a court of  
27 competent jurisdiction to enjoin any paid tax return preparer from further  
28 engaging in any conduct described in subsection (b) or from further action  
29 as a paid tax return preparer in this state. The secretary may request the  
30 assistance of the attorney general or the attorney general's duly authorized  
31 designee to enforce provisions of this section.

32 (b) In an action pursuant to subsection (a), the court may enjoin the  
33 paid tax return preparer from further engaging in any conduct described in  
34 this subsection, if the court finds that injunctive relief is appropriate to  
35 prevent occurrence of such conduct. The court may issue an injunction  
36 when the paid tax return preparer has engaged in any of the following  
37 conduct:

38 (1) Prepared any income tax return or claim for refund that includes  
39 an understatement of a taxpayer's liability due to an unreasonable position.  
40 As used in this subsection, "unreasonable position" shall have the meaning  
41 ascribed by section 6694(a)(2) of the federal internal revenue code;

42 (2) prepared any income tax return or claim for refund that includes  
43 an understatement of a taxpayer's liability due to the paid tax return

1 preparer's willful or reckless conduct. As used in this subsection, "willful  
2 or reckless conduct" shall have the meaning ascribed by section 6694(b)(2)  
3 of the federal internal revenue code;

4 (3) where required, failed to do any of the following:

5 (A) Furnish a copy of the income tax return or claim for refund;

6 (B) sign the income tax return or claim for refund;

7 (C) furnish an identifying number;

8 (D) retain a copy of the income tax return or claim for refund; or

9 (E) be diligent in determining eligibility for tax benefits;

10 (4) negotiated a check issued to the taxpayer by the department of  
11 revenue without the permission of the taxpayer;

12 (5) engaged in any conduct subject to any criminal penalty provided  
13 for in chapter 79 of the Kansas Statutes Annotated, and amendments  
14 thereto;

15 (6) misrepresented the paid tax return preparer's eligibility to practice  
16 before the department of revenue or otherwise misrepresented the paid tax  
17 return preparer's experience or education;

18 (7) guaranteed the payment of any income tax refund or the  
19 allowance of any income tax credit; or

20 (8) engaged in any other fraudulent or deceptive conduct that  
21 substantially interferes with the proper administration of the tax laws of  
22 the state of Kansas.

23 (c) If the court finds that a paid tax return preparer has continually or  
24 repeatedly engaged in any conduct described in subsection (b) and that an  
25 injunction prohibiting the conduct would not be sufficient to prevent the  
26 person's interference with the proper administration of the tax laws of the  
27 state of Kansas, the court may enjoin the person from acting as a paid tax  
28 return preparer in the state of Kansas. The fact that the person has been  
29 enjoined from preparing tax returns or claims for refund for the United  
30 States or any other state in the five years preceding the petition for an  
31 injunction shall establish a prima facie case for an injunction to be issued  
32 pursuant to this section. For purposes of this subsection, "state" means a  
33 state of the United States, the District of Columbia, Puerto Rico, the  
34 United States Virgin Islands or any territory or insular possession subject  
35 to the jurisdiction of the United States.

36 (d) The secretary or the secretary's designee shall annually report a  
37 summary of the secretary's enjoinder actions on the department of  
38 revenue's website.

39 Sec. 5. (a) Preparation or substantial preparation of any income tax  
40 return or claim for refund filed pursuant to K.S.A. 79-3201 et seq., and  
41 amendments thereto, by a paid tax return preparer, whether or not a  
42 resident or citizen of this state, thereby submits the preparer to the  
43 jurisdiction of the courts of this state as to any cause of action arising from

1 the provisions of this act.

2 (b) Every action pursuant to this act shall be brought in the district  
3 court of Shawnee county.

4 (c) In lieu of instigating or continuing an action or proceeding, the  
5 secretary or the secretary's designee may accept a consent judgment with  
6 respect to any act or practice declared to be a violation of this act. A  
7 consent judgment shall provide for the discontinuance by the paid tax  
8 return preparer entering the same of any act or practice declared to be a  
9 violation of this act. Any consent judgment entered into pursuant to this  
10 section shall not be deemed to admit the violation, unless it does so by its  
11 terms. Before any consent judgment entered into pursuant to this section  
12 shall be effective, it must be approved by the district court and an entry  
13 made in the manner required for making an entry of judgment. Once such  
14 approval is received, any breach of the conditions of such consent  
15 judgment shall be treated as a violation of a court order and shall be  
16 subject to all the penalties provided by law.

17 Sec. 6. The secretary may adopt rules and regulations necessary to  
18 carry out the provisions of the Kansas taxpayer protection act.

19 Sec. 7. This act shall take effect and be in force from and after its  
20 publication in the statute book.