

HOUSE BILL No. 2365

By Committee on Taxation

2-24

1 AN ACT concerning taxation; imposing excise tax on the transmission of
2 money by money transmitters; prescribing rate of taxation;
3 procedures; distribution of revenue; amending K.S.A. 75-5113 and
4 K.S.A. 2010 Supp. 9-508 and 75-5133 and repealing the existing
5 sections.

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

8 New Section 1. (a) Any money transmitter by wire, as defined in
9 K.S.A. 2010 Supp. 9-508, and amendments thereto, shall collect an
10 excise tax of \$15 for each transaction of \$500 or less or, an amount equal
11 to 3% of any transaction in excess of \$500. A receipt for such excise
12 taxes shall be issued to the customer.

13 (b) Any such money transmitter by wire shall file monthly reports
14 and returns with the director of taxation electronically at such times, in
15 such form, and with such information, including records of all transaction
16 receipts, as required by the director of taxation. The money transmitter by
17 wire, at the time of filing the monthly return, shall pay by electronic fund
18 transfer to the director of taxation the amount of excise taxes collected as
19 provided by this act. Such return and payment of excise taxes shall be due
20 on or before the 25th day of each month following the monthly reporting
21 period of the return.

22 (c) The secretary of revenue:

23 (1) Shall notify the state bank commissioner of any money
24 transmitter by wire that has not filed a monthly report for more than 60
25 days;

26 (2) may, upon request of the commissioner, assist in conducting
27 audits and the seeking of legal remedies to ensure compliance with this
28 act;

29 (3) may request the commissioner to make a claim against the surety
30 bond of the licensee for unpaid excise taxes, interest, and fines on behalf
31 of the state; and

32 (4) may adopt rules and regulations necessary to administer the
33 provisions of subsections (a), (b), and (c).

34 (d) The commissioner:

35 (1) May, for nonpayment of excise taxes as provided in this act,
36 assess penalties equal to the amount of excise taxes owed to be paid to

1 the drug money laundering and public safety fee fund;

2 (2) may, upon the request of the director of taxation or the director
3 of the Kansas bureau of investigation, make a claim against the surety
4 bond of the licensee for unpaid excise taxes, interest and fines on behalf
5 of the state; and

6 (3) may adopt rules and regulations necessary to administer the
7 provisions of this subsection.

8 (e) The Kansas bureau of investigation:

9 (1) May, at the request of the commissioner, assist in the conducting
10 of audits and the seeking of legal remedies to ensure compliance with this
11 act;

12 (2) may request the commissioner to make a claim against the surety
13 bond of the licensee for unpaid excise taxes, interest and fines on behalf
14 of the state of Kansas; and

15 (3) may adopt rules and regulations as necessary to implement the
16 provisions of this subsection.

17 (f) Failure to pay such excise taxes may, at the discretion of the
18 commissioner, result in the assessment of penalties equal to the amount
19 owed. Such penalties shall be remitted to the drug money laundering and
20 public safety fee fund established in section 3, and amendments thereto.

21 (g) The provisions of K.S.A. 79-3609, 79-3610, 79-3611, 79-3612,
22 79-3615, 79-3617 and 79-3643, and amendments thereto, shall apply to
23 the administration and enforcement of this act.

24 New Sec. 2. Commencing in tax year 2012, and all tax years
25 thereafter, there shall be allowed as a credit against tax liability of a
26 resident individual imposed under the Kansas income tax act, an amount
27 equal to the amount of any excise taxes paid pursuant to the provisions of
28 section 1, and amendments thereto, during the tax year. If the amount of
29 the credit allowed by this section exceeds the taxpayer's income tax
30 liability imposed under the Kansas income tax act, such excess amount
31 shall be refunded to the taxpayer. The secretary of revenue shall adopt
32 rules and regulations regarding filing of documents that support the
33 amount of credit claimed pursuant to this section.

34 New Sec. 3. (a) There is hereby established in the state treasury the
35 drug money laundering and public safety fee fund which shall be
36 administered by the Kansas bureau of investigation. All money
37 transmitter by wire tax moneys collected by the director of taxation under
38 the provisions of this act shall be remitted to the state treasurer in
39 accordance with the provisions of K.S.A. 75-4215, and amendments
40 thereto. Upon receipt of such remittance, the state treasurer shall deposit
41 the entire amount in the state treasury to the credit of the drug money
42 laundering and public safety fee fund. All expenditures from the drug
43 money laundering and public safety fee fund shall be for the purpose of

1 supporting the Kansas bureau of investigation forensic laboratory
2 construction project, the Kansas bureau of investigation salary and
3 equipment improvement initiative, special public safety programs of the
4 KBI approved by the attorney general and for the reimbursement of
5 excise taxes paid by customers pursuant to K.S.A. 9-510, and
6 amendments thereto.

7 (b) Moneys in the drug money laundering and public safety fee fund
8 shall not be considered a source of revenue to meet normal operating
9 expenses. Such funds shall be expended in accordance with appropriation
10 acts upon warrants of the director of accounts and reports issued pursuant
11 to vouchers approved by the director of the Kansas bureau of
12 investigation or the director of taxation.

13 Sec. 4. K.S.A. 2010 Supp. 9-508 is hereby amended to read as
14 follows: 9-508. As used in this act:

15 (a) "Commissioner" means the state bank commissioner;

16 (b) "electronic instrument" means a card or other tangible object for
17 the transmission or payment of money, including a stored value card or
18 device which contains a microprocessor chip, magnetic stripe or other
19 means for the storage of information, that is prefunded and for which the
20 value is decremented upon each use, but does not include a card or other
21 tangible object that is redeemable by the issuer in goods or services;

22 (c) "monetary value" means a medium of exchange, whether or not
23 redeemable in money;

24 (d) "money transmission" means to engage in the business of the
25 sale or issuance of payment instruments or of receiving money or
26 monetary value for transmission to a location within or outside the United
27 States by wire, facsimile, electronic means or any other means;

28 (e) "outstanding payment instrument" means any payment
29 instrument issued by the licensee which has been sold in the United
30 States directly by the licensee or any money order or instrument issued by
31 the licensee which has been sold by an agent of the licensee in the United
32 States, which has been reported to the licensee as having been sold and
33 which has not yet been paid by or for the licensee;

34 (f) "payment instrument" means any electronic or written check,
35 draft, money order, travelers check or other electronic or written
36 instrument or order for the transmission or payment of money, sold or
37 issued to one or more persons, whether or not such instrument is
38 negotiable. The term "payment instrument" does not include any credit
39 card voucher, any letter of credit or any instrument which is redeemable
40 by the issuer in goods or services;

41 (g) "permissible investments" means:

42 (1) Cash;

43 (2) certificates of deposit or other debt obligations of a financial

- 1 institution, either domestic or foreign;
- 2 (3) bills of exchange or time drafts drawn on and accepted by a
3 commercial bank, otherwise known as bankers' acceptances, which are
4 eligible for purchase by member banks of the federal reserve system;
- 5 (4) any investment bearing a rating of one of the three highest grades
6 as defined by a nationally recognized organization that rates such
7 securities;
- 8 (5) investment securities that are obligations of the United States, its
9 agencies or instrumentalities, or obligations that are guaranteed fully as to
10 principal and interest of the United States, or any general obligations of
11 any state, municipality or any political subdivision thereof;
- 12 (6) shares in a money market mutual fund, interest-bearing bills, ~~or~~
13 notes or bonds, debentures or stock traded on any national securities
14 exchange or on a national over-the-counter market, or mutual funds
15 primarily composed of such securities or a fund composed of one or more
16 permissible investments as set forth herein;
- 17 (7) any demand borrowing agreement or agreements made to a
18 corporation or a subsidiary of a corporation whose capital stock is listed
19 on a national exchange;
- 20 (8) receivables which are due to a licensee from its authorized
21 agents pursuant to a contract, which are not past due or doubtful of
22 collection; or
- 23 (9) any other investment or security device approved by the
24 commissioner-;
- 25 (h) "person" means any individual, partnership, association, joint-
26 stock association, trust, corporation or any other form of business
27 enterprise authorized to do business in this state; ~~and~~
- 28 (i) "stored value" means monetary value that is evidenced by an
29 electronic record-; *and*
- 30 (j) *"money transmitter by wire" means any person receiving*
31 *payment for the service of sending or receiving money from another*
32 *location or person. Money transmitter by wire shall not include:*
- 33 (1) *The United States or a department, agency or instrumentality*
34 *thereof;*
- 35 (2) *money transmission by the United States postal service or by a*
36 *contractor on behalf of the United States postal service;*
- 37 (3) *a state, county, city or any other governmental agency or*
38 *governmental subdivision of a State;*
- 39 (4) *a bank;*
- 40 (5) *electronic funds transfer of governmental benefits for a federal,*
41 *state, county or governmental agency by a contractor on behalf of the*
42 *United States or a department, agency or instrumentality thereof, or a*
43 *state or governmental subdivision, agency or instrumentality thereof;*

1 (6) a board of trade designated as a contract market under the
2 federal commodity exchange act, 7 U.S.C. §§ 1-25 (1994), or a person
3 that, in the ordinary course of business, provides clearance and
4 settlement services for a board of trade to the extent of its operation as or
5 for such a board;

6 (7) a registered futures commission merchant under the federal
7 commodities laws to the extent of its operation as such a merchant;

8 (8) a person that provides clearance or settlement services pursuant
9 to a registration as a clearing agency or an exemption from such
10 registration granted under the federal securities laws to the extent of its
11 operation as such a provider;

12 (9) an operator of a payment system to the extent that it provides
13 processing, clearing or settlement services, between or among persons
14 excluded by this section, in connection with wire transfers, credit card
15 transactions, debit card transactions, stored-value transactions,
16 automated clearing house transfers or similar funds transfers; or

17 (10) a person registered as a securities broker-dealer under federal
18 or state securities laws to the extent of its operation as such a broker-
19 dealer.

20 Sec. 5. K.S.A. 2010 Supp. 75-5133 is hereby amended to read as
21 follows: 75-5133. (a) Except as otherwise more specifically provided by
22 law, all information received by the secretary of revenue, the director of
23 taxation or the director of alcoholic beverage control from returns,
24 reports, license applications or registration documents made or filed
25 under the provisions of any law imposing any sales, use or other excise
26 tax administered by the secretary of revenue, the director of taxation, or
27 the director of alcoholic beverage control, or from any investigation
28 conducted under such provisions, shall be confidential, and it shall be
29 unlawful for any officer or employee of the department of revenue to
30 divulge any such information except in accordance with other provisions
31 of law respecting the enforcement and collection of such tax, in
32 accordance with proper judicial order or as provided in K.S.A. 74-2424,
33 and amendments thereto.

34 (b) The secretary of revenue or the secretary's designee may:

35 (1) Publish statistics, so classified as to prevent identification of
36 particular reports or returns and the items thereof;

37 (2) allow the inspection of returns by the attorney general or the
38 attorney general's designee;

39 (3) provide the post auditor access to all such excise tax reports or
40 returns in accordance with and subject to the provisions of subsection (g)
41 of K.S.A. 46-1106, and amendments thereto;

42 (4) disclose taxpayer information from excise tax returns to persons
43 or entities contracting with the secretary of revenue where the secretary

1 has determined disclosure of such information is essential for completion
2 of the contract and has taken appropriate steps to preserve confidentiality;

3 (5) provide information from returns and reports filed under article
4 42 of chapter 79 of the Kansas Statutes Annotated, *and amendments*
5 *thereto*, to county appraisers as is necessary to insure proper valuations of
6 property. Information from such returns and reports may also be
7 exchanged with any other state agency administering and collecting
8 conservation or other taxes and fees imposed on or measured by mineral
9 production;

10 (6) provide, upon request by a city or county clerk or treasurer or
11 finance officer of any city or county receiving distributions from a local
12 excise tax, monthly reports identifying each retailer doing business in
13 such city or county or making taxable sales sourced to such city or
14 county, setting forth the tax liability and the amount of such tax remitted
15 by each retailer during the preceding month, and identifying each
16 business location maintained by the retailer and such retailer's sales or use
17 tax registration or account number;

18 (7) provide information from returns and applications for
19 registration filed pursuant to K.S.A. 12-187, and amendments thereto,
20 and K.S.A. 79-3601, and amendments thereto, to a city or county
21 treasurer or clerk or finance officer to explain the basis of statistics
22 contained in reports provided by subsection (b)(6);

23 (8) disclose the following oil and gas production statistics received
24 by the department of revenue in accordance with K.S.A. 79-4216 et seq.,
25 and amendments thereto: Volumes of production by well name, well
26 number, operator's name and identification number assigned by the state
27 corporation commission, lease name, leasehold property description,
28 county of production or zone of production, name of purchaser and
29 purchaser's tax identification number assigned by the department of
30 revenue, name of transporter, field code number or lease code, tax period,
31 exempt production volumes by well name or lease; or any combination of
32 this information;

33 (9) release or publish liquor brand registration information provided
34 by suppliers, farm wineries and microbreweries in accordance with the
35 liquor control act. The information to be released is limited to: Item
36 number, universal numeric code, type status, product description, alcohol
37 percentage, selling units, unit size, unit of measurement, supplier number,
38 supplier name, distributor number and distributor name;

39 (10) release or publish liquor license information provided by liquor
40 licensees, distributors, suppliers, farm wineries and microbreweries in
41 accordance with the liquor control act. The information to be released is
42 limited to: County name, owner, business name, address, license type,
43 license number, license expiration date and the process agent contact

1 information;

2 (11) release or publish cigarette and tobacco license information
3 obtained from cigarette and tobacco licensees in accordance with the
4 Kansas cigarette and tobacco products act. The information to be released
5 is limited to: County name, owner, business name, address, license type
6 and license number;

7 (12) provide environmental surcharge or solvent fee, or both,
8 information from returns and applications for registration filed pursuant
9 to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the
10 secretary of health and environment or the secretary's designee for the
11 sole purpose of ensuring that retailers collect the environmental surcharge
12 tax or solvent fee, or both;

13 (13) provide water protection fee information from returns and
14 applications for registration filed pursuant to K.S.A. 82a-954, and
15 amendments thereto, to the secretary of the state board of agriculture or
16 the secretary's designee and the secretary of the Kansas water office or
17 the secretary's designee for the sole purpose of verifying revenues
18 deposited to the state water plan fund;

19 (14) provide to the secretary of commerce copies of applications for
20 project exemption certificates sought by any taxpayer under the enterprise
21 zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606,
22 and amendments thereto;

23 (15) disclose information received pursuant to the Kansas cigarette
24 and tobacco act and subject to the confidentiality provisions of this act to
25 any criminal justice agency, as defined in subsection (c) of K.S.A. 22-
26 4701, and amendments thereto, or to any law enforcement officer, as
27 defined in subsection (c)(10) of K.S.A. 21-3110, and amendments
28 thereto, on behalf of a criminal justice agency, when requested in writing
29 in conjunction with a pending investigation; ~~and~~

30 (16) provide to retailers tax exemption information for the sole
31 purpose of verifying the authenticity of tax exemption numbers issued by
32 the department; *and*

33 *(17) provide information concerning a money transmitter by wire to*
34 *the state bank commissioner for the purposes of section 1, and*
35 *amendments thereto.*

36 (c) Any person receiving any information under the provisions of
37 subsection (b) shall be subject to the confidentiality provisions of
38 subsection (a) and to the penalty provisions of subsection (d).

39 (d) Any violation of this section shall be a class A₂ nonperson
40 misdemeanor, and if the offender is an officer or employee of this state,
41 such officer or employee shall be dismissed from office. Reports of
42 violations of this paragraph shall be investigated by the attorney general.
43 The district attorney or county attorney and the attorney general shall

1 have authority to prosecute any violation of this section if the offender is
2 a city or county clerk or treasurer or finance officer of a city or county.

3 Sec. 6. K.S.A. 75-5113 and K.S.A. 2010 Supp. 9-508 and 75-5133
4 are hereby repealed.

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