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

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

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

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

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

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

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

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

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

New Sec. 3. (a) Beginning on January 1, 2020, an operator shall obtain an annual license from the director, as provided by this act,
permitting such person to operate mechanical amusement devices in the
state of Kansas. Licenses shall be issued by the director upon application
for the license made on forms furnished by the director containing such
information as the director may require, subscribed to by the applicant or
the applicant's authorized designee. The application for a license under this
section shall be filed on or before January 1 of each year, and no license
fee shall be required.

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

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

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

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

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

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

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

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

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

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

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

New Sec. 9. Prosecutions for any violation of sections 1 through 10, and amendments thereto, shall be brought by the attorney general or
county attorney in the county in which the violation occurs. Any prosecution for the violation of any of the provisions of sections 1 through 10, and amendments thereto, shall be instituted within three years after the commission of the offense.

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

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

(a) The gross receipts received from the sale of tangible personal property at retail within this state;
(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2018 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2018 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (5) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001;
(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP
gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier; (d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public; (e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially; (f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except: (1) Laundry services, whether automatic or manually operated; and (2) on and after January 1, 2020, mechanical amusement devices, as defined by section 2, and amendments thereto; (g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501, and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto, but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties; (h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon; (i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated; (j) the gross receipts from the rendering of the services of washing and washing and waxing of vehicles;
(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

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

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

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

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

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; (2) the transfer of motor
vehicles or trailers by one corporation or limited liability company to
another when all of the assets of such corporation or limited liability
company are transferred to such other corporation or limited liability
company; or (3) the sale of motor vehicles or trailers which are subject to
taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
amendments thereto, by an immediate family member to another
immediate family member. For the purposes of paragraph (3), immediate
family member means lineal ascendants or descendants, and their spouses.
Any amount of sales tax paid pursuant to the Kansas retailers sales tax act
on the isolated or occasional sale of motor vehicles or trailers on and after
July 1, 2004, which the base for computing the tax was the value pursuant
to K.S.A. 79-5105(a), (b)(1) and (b)(2), and amendments thereto, when
such amount was higher than the amount of sales tax which would have
been paid under the law as it existed on June 30, 2004, shall be refunded to
the taxpayer pursuant to the procedure prescribed by this section. Such
refund shall be in an amount equal to the difference between the amount of
sales tax paid by the taxpayer and the amount of sales tax which would
have been paid by the taxpayer under the law as it existed on June 30,
2004. Each claim for a sales tax refund shall be verified and submitted not
later than six months from the effective date of this act to the director of
taxation upon forms furnished by the director and shall be accompanied by
any additional documentation required by the director. The director shall
review each claim and shall refund that amount of tax paid as provided by
this act. All such refunds shall be paid from the sales tax refund fund, upon
warrants of the director of accounts and reports pursuant to vouchers
approved by the director of taxation or the director's designee. No refund
for an amount less than $10 shall be paid pursuant to this act. In
determining the base for computing the tax on such isolated or occasional
sale, the fair market value of any motor vehicle or trailer traded in by the
purchaser to the seller may be deducted from the selling price;
(p) the gross receipts received for the service of installing or applying
tangible personal property which when installed or applied is not being
held for sale in the regular course of business, and whether or not such
tangible personal property when installed or applied remains tangible
personal property or becomes a part of real estate, except that no tax shall
be imposed upon the service of installing or applying tangible personal
property in connection with the original construction of a building or
facility, the original construction, reconstruction, restoration, remodeling,
renovation, repair or replacement of a residence or the construction,
reconstruction, restoration, replacement or repair of a bridge or highway.
For the purposes of this subsection:
(1) "Original construction" shall mean the first or initial construction
of a new building or facility. The term "original construction" shall include
the addition of an entire room or floor to any existing building or facility,
the completion of any unfinished portion of any existing building or
facility and the restoration, reconstruction or replacement of a building,
facility or utility structure damaged or destroyed by fire, flood, tornado,
lightning, explosion, windstorm, ice loading and attendant winds,
terrorism or earthquake, but such term, except with regard to a residence,
shall not include replacement, remodeling, restoration, renovation or
reconstruction under any other circumstances;
(2) "building" shall mean only those enclosures within which
individuals customarily are employed, or which are customarily used to
house machinery, equipment or other property, and including the land
improvements immediately surrounding such building;
(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
well, feedlot or any conveyance, transmission or distribution line of any
cooperative, nonprofit, membership corporation organized under or subject
to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or
municipal or quasi-municipal corporation, including the land
improvements immediately surrounding such facility;
(4) "residence" shall mean only those enclosures within which
individuals customarily live;
(5) "utility structure" shall mean transmission and distribution lines
owned by an independent transmission company or cooperative, the
Kansas electric transmission authority or natural gas or electric public
utility; and
(6) "windstorm" shall mean straight line winds of at least 80 miles per
hour as determined by a recognized meteorological reporting agency or
organization;
(q) the gross receipts received for the service of repairing, servicing,
altering or maintaining tangible personal property which when such
services are rendered is not being held for sale in the regular course of
business, and whether or not any tangible personal property is transferred
in connection therewith. The tax imposed by this subsection shall be
applicable to the services of repairing, servicing, altering or maintaining an
item of tangible personal property which has been and is fastened to,
connected with or built into real property;
(r) the gross receipts from fees or charges made under service or
maintenance agreement contracts for services, charges for the providing of
which are taxable under the provisions of subsection (p) or (q);
(s) on and after January 1, 2005, the gross receipts received from the
sale of prewritten computer software and the sale of the services of
modifying, altering, updating or maintaining prewritten computer
software, whether the prewritten computer software is installed or
delivered electronically by tangible storage media physically transferred to
the purchaser or by load and leave;
(t) the gross receipts received for telephone answering services;
(u) the gross receipts received from the sale of prepaid calling service and prepaid wireless calling service as defined in K.S.A. 2018 Supp. 79-3673, and amendments thereto;
(v) all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section; and
(w) all sales of charitable raffle tickets in accordance with K.S.A. 2018 Supp. 75-5171 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

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

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