AN ACT concerning income taxation; relating to withholding taxes; establishing withholding requirements for certain employees who work in multiple states; determination of employer penalties.

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

Section 1. (a) As used in this section:

(1) "Certain public figures" means persons of prominence who perform services for wages or other remuneration on a per-event basis, provided that the wages or other remuneration are paid to such person for services provided at a discrete event, in the nature of a speech, public appearance or similar event;

(2) "employee" means the same as defined in K.S.A. 79-3295, and amendments thereto, except that the term "employee" shall not include a professional athlete, professional entertainer, qualified production employee or certain public figures;

(3) "employer" means the same as defined in K.S.A. 79-3295, and amendments thereto;

(4) "professional athlete" means a person who performs services in a professional athletic event, provided that the wages or other remuneration are paid to such person for performing services in the person's capacity as a professional athlete;

(5) "professional entertainer" means a person of prominence who performs services in the professional performing arts for wages or other remuneration on a per-event basis, provided that the wages or other remuneration are paid to such person for performing services in the person's capacity as a professional entertainer;

(6) "qualified production employee" means a person who performs production services of any nature directly in connection with a qualified, certified or approved film, television or other commercial video production for wages or other remuneration, provided that the wages or other remuneration paid to such person are qualified production costs or expenditures under such qualified, certified or approved film incentive program and that such wages or other remuneration must be subject to withholding under such film incentive program as a condition to treating such wages or other remuneration as a qualified production cost or expenditure;
"time and attendance system" means a system in which:

(A) The employee is required on a contemporaneous basis to record the person's work location for every day worked outside of the state in which the employee's employment duties are primarily performed; and

(B) the system is designed to allow the employer to allocate the employee's wages or other remuneration for income tax purposes among all states in which the employee performs employment duties for such employer; or

(8) "wages or other remuneration" includes wages and payment other than wages as such terms are defined in K.S.A. 79-3295, and amendments thereto.

(b) No part of the wages or other remuneration earned by the employee who performs employment duties in more than one state shall be subject to income tax in any state other than:

(1) The state of the employee's residence; or

(2) the state that the employee is present and performing employment duties for more than 30 days during the calendar year that the wages or other remuneration is earned.

(c) Wages or other remuneration earned in any calendar year shall not be subject to Kansas income tax withholding and reporting requirements unless the employee is subject to income tax in Kansas pursuant to subsection (b). Income tax withholding and reporting requirements under subsection (b)(2) shall apply to wages or other remuneration earned as of the commencement date of employment duties in the state during the calendar year.

(d) Except as provided in subsection (b), an employee is considered present and performing employment duties within a state for a day if the employee performs more of the employee's employment duties within such state than in any other state during a day.

(e) If an employee performs employment duties in Kansas and in only one nonresident state during one day, such employee shall be considered to have performed more of the employee's employment duties in the nonresident state than in Kansas on such day.

(f) For purposes of this section, the portion of the day during which the employee is in transit shall not be considered in determining the location of an employee's performance of employment duties.

(g) For purposes of determining penalties related to an employer's income tax withholding and reporting requirements:

(1) An employer may rely on an employee's annual determination of the time expected to be spent by such employee in the states in which the employee will perform duties absent:

(A) The employer's actual knowledge of fraud by the employee in making the determination; or
(B) collusion between the employer and the employee to evade tax;
(2) except as provided in paragraph (3), if records are maintained by an employer in the regular course of business that record the location of an employee, such records shall not preclude an employer's ability to rely on an employee's determination under paragraph (1); and
(3) notwithstanding paragraph (2), if an employer, at its sole discretion, maintains a time and attendance system that tracks where the employee performs duties on a daily basis, data from the time and attendance system shall be used instead of the employee's determination under paragraph (1).

(h) This section shall be a part of and supplemental to the Kansas withholding and declaration of estimated tax act.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.