

As Amended by Senate Committee of the Whole

As Amended by Senate Committee

Session of 2023

SENATE BILL No. 91

By Committee on Commerce

1-24

1 AN ACT concerning economic development; enacting the Kansas film and
2 digital media production development act; establishing an income tax
3 credit-~~and~~, sales tax exemption ~~and loan and grant fund loan and~~
4 ~~grant~~ program to be administered by the secretary of commerce for
5 the purpose of developing film, video or digital production in Kansas;
6 ~~establishing the Kansas film and digital media production development~~
7 ~~act-education fund and the Kansas film and digital media production~~
8 ~~development act-workforce training and business direct investment~~
9 ~~fund; establishing the Kansas film and digital media production~~
10 ~~development act education fund and the Kansas film and digital~~
11 ~~media production development act workforce training and business~~
12 ~~direct investment fund;~~ amending K.S.A. 2022 Supp. 79-3606 and
13 repealing the existing section.
14

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

15
16 New Section 1. Sections 1 through 8-6 &, and amendments thereto,
17 shall be known and may be cited as the Kansas film and digital media
18 production development act. The purpose of the Kansas film and digital
19 media production development act is to incentivize film, video or digital
20 media productions in Kansas and facilitate the development and growth of
21 a film, video or digital media production industry and associated
22 businesses supporting the industry in this state.

23 New Sec. 2. As used in this act:

24 (a) "Above-the-line personnel" means any individual hired or credited
25 on screen for an eligible production for work on the production or
26 postproduction of film as a:

27 (1) Principal cast member compensated for the eligible production
28 project at a screen actors guild schedule f or above payment rate; or

29 (2) producer, screenwriter or director.

30 (b) "Act" means the Kansas film and digital media production
31 development act.

32 (c) "Affiliates" means those entities that are included in the
33 production company's affiliated group as defined in section 1504(a) of the
34 internal revenue code, 26 U.S.C. § 1504(a), and all other entities that are

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Prepared by: Office of Revisor of Statutes
Credit Transfer

1 in compliance with the requirements of this act. The report shall be
2 provided with a claim for income tax credits as required by section 4, and
3 amendments thereto, or as required by the secretary.

4 (h) The secretary shall notify the production company and the
5 secretary of revenue of determinations of qualified expenditures made by
6 the secretary.

7 (i) The secretary of commerce and the secretary of revenue may
8 adopt rules and regulations to implement the provisions of this act.

9 New Sec. 4. (a) For tax years 2023 through 2032, for any production
10 company or its affiliates that make qualified production or qualified
11 postproduction expenditures for a certified production approved by the
12 secretary of commerce as provided by section 3, and amendments thereto,
13 there shall be allowed an income tax credit against the tax imposed under
14 the Kansas income tax act in the amount as determined pursuant to
15 subsection (d) as limited by subsection (h). The tax credit shall be applied
16 against the production company's income tax liability for the taxable year
17 in which the qualified expenditures are made by the production company.
18 If the amount of the tax credit allowed exceeds the production company's
19 income tax liability for the taxable year, an amount equal to the remainder
20 of the unused tax credits shall be refunded to the production company the
21 production company may carry over the amount of the tax credit that
22 exceeds such tax liability for deduction from the production company's
23 income tax liability in the next succeeding taxable year or years until the
24 total amount of the tax credit has been deducted from the production
25 company's tax liability, except that no such tax credit shall be carried
26 over for deduction after the 10th taxable year succeeding the year in
27 which the qualified expenditures were made by the production company.
28 If the production company is a corporation having an election in effect
29 under subchapter S of the federal internal revenue code, a partnership or a
30 limited liability company, the credit provided by this section shall be
31 claimed by the shareholders of such corporation, the partners of such
32 partnership or members of such limited liability company in the same
33 manner as such shareholders, partners or members account for their
34 proportionate shares of the income or loss of the corporation, partnership
35 or limited liability company and in accordance with the agreement
36 executed pursuant to section 3, and amendments thereto. The tax credit
37 may be transferred as provided by subsection (f). The aggregate total
38 amount of credits allowed under this section shall not exceed \$10,000,000
39 in a tax year. Ten percent of such aggregate total in each tax year shall be
40 designated for tax credits to Kansas-based production companies.
41 (b) A claim for a tax credit shall be filed with the secretary of revenue
42 as part of a return filed by the production company pursuant to the Kansas
43 income tax act. The order that agreements are executed with the secretary

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1 that has previously received an income tax credit under this act with
2 respect to such certified project.

3 (f) In addition to or in lieu of the credits authorized by subsection (d),
4 as determined by the secretary, a Kansas-based production company that
5 incurs at least \$25,000 in qualified expenditures, including, but not limited
6 to, expenditures for a certified production not intended for multistate
7 distribution but that otherwise constitute qualified expenditures and meets
8 all other qualifications for a tax credit under this act shall receive a
9 ~~nonrefundable~~ tax credit in the amount of 25% of such qualified
10 ~~production~~ expenditures. *The tax credit shall be applied against the*
11 *Kansas-based production company's income tax liability for the taxable*
12 *year in which the qualified expenditures are made by the Kansas-based*
13 *production company. If the amount of the tax credit exceeds the Kansas-*
14 *based production company's income tax liability, the Kansas-based*
15 *production company may carry over the amount of the tax credit that*
16 *exceeds such tax liability for deduction from the Kansas-based*
17 *production company's income tax liability in the next succeeding taxable*
18 *year or years until the total amount of the tax credit has been deducted*
19 *from the Kansas-based production company's tax liability, except that no*
20 *such tax credit shall be carried over for deduction after the 10th taxable*
21 *year succeeding the year in which the qualified expenditures were made*
22 *by the Kansas-based production company. If the Kansas-based*
23 *production company is a corporation having an election in effect under*
24 *subchapter S of the federal internal revenue code, a partnership or a*
25 *limited liability company, the credit shall be claimed by the shareholders*
26 *of such corporation, the partners of such partnership or members of*
27 *such limited liability company in the same manner as such shareholders,*
28 *partners or members account for their proportionate shares of the*
29 *income or loss of the corporation, partnership or limited liability*
30 *company and in accordance with the agreement executed pursuant to*
31 *section 3, and amendments thereto. ~~The tax credit may be transferred as~~*
32 *~~provided by subsection (f).~~*

33 (g) Notwithstanding any other provision of this act, the tax credit
34 amount based on a production or postproduction expenditure for a single
35 individual who meets the definition of individuals who are above-the-line,
36 nonresident personnel shall be limited to not more than \$500,000 in each
37 taxable year.

38 (h) The maximum cumulative amount of all income tax credits
39 awarded to a production company for a certified project for a taxable year
40 shall not exceed 40% of the total qualified production expenditures or
41 qualified postproduction expenditures made by the production company
42 for that certified project during that taxable year.

43 (i) For purposes of determining the payment of credit claims pursuant

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1 to this section, the secretary of revenue may require that credit claims of
2 affiliates be combined into one claim if necessary to accurately reflect
3 closely integrated activities of affiliates.

4 (j) If a production company hires another production company to
5 produce a project or contribute elements of a project for pay, the hired
6 company shall be considered a service provider for the hiring company,
7 and the hiring company shall be entitled to the income tax credit
8 authorized by this section.

9 ~~(k) The tax credit allowed pursuant to this section may be transferred,
10 in whole or in part, by the production company or, as provided by
11 subsection (a), a shareholder, partner or member, to one or more
12 transferees. The transferor shall provide notification and documentation of
13 the transfer or transfers with its claim for a tax credit pursuant to
14 subsection (b) filed with the secretary of revenue in such form and manner
15 as may be required by the secretary of revenue, including all information
16 requested by the secretary of revenue regarding the transferee. The
17 transferor shall make the transfer within the calendar year in which the
18 transferor's claim is made to the secretary of revenue. The credit shall only
19 be transferred once. The transferor may transfer the credit to any
20 individual or entity subject to income tax under the Kansas income tax act.
21 The transferred credit shall be claimed by the transferee against the
22 transferor's Kansas income tax liability in the taxable year the credit was
23 transferred. The amount of the transferred credit that exceeds the
24 transferor's tax liability for such year shall be refunded to the transferee
25 may be carried over for deduction from the transferor's income tax
26 liability in the next succeeding taxable year or years until the total
27 amount of the tax credit has been deducted from the transferor's tax
28 liability, except that no such tax credit shall be carried over for
29 deduction after the 10th taxable year succeeding the taxable year in
30 which the credit was transferred to the transferee. The transferor or
31 transferee shall provide such documentation of the transfer to the secretary
32 of revenue as may be required by the secretary and at such time as may be
33 required by the secretary.~~

34 (l) ~~The aggregate total amount of credits allowed under this section
35 shall not exceed \$10,000,000 in a tax year. Ten percent of such
36 aggregate total in each tax year shall be designated for tax credits to
37 Kansas-based production companies.~~

38 New Sec. 5. On or before January 31, 2024, and each January 31
39 through January 31, 2033, the secretary of commerce shall submit an
40 annual report to the house of representatives standing committees on
41 commerce, labor and economic development and taxation and the senate
42 standing committees on commerce and assessment and taxation. The
43 report shall include the amounts and recipients of tax incentives approved

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