

HOUSE BILL No. 2626

By Committee on Taxation

2-5

1 AN ACT concerning taxation; relating to incentives for employment of
2 persons who rely upon medicaid or other government subsidies in order
3 to decrease such reliance; enacting the Kansas tax weight loss act.
4

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

6 Section 1. (a) The provisions of sections 1 through 11, and
7 amendments thereto, shall be known and may be cited as the Kansas tax
8 weight loss act.

9 (b) It shall be the intent of this act to measurably decrease the reliance
10 upon medicaid and other sources of governmental funding by persons who
11 are primarily reliant upon these sources of funding for their sustenance or
12 shelter and by social service organizations that provide services to such
13 persons through incentivizing the creation of new jobs and opportunities
14 for such persons in Kansas.

15 Sec. 2. As used in this act, unless the context otherwise requires:

16 (a) "Certified tax weight-loss business" means:

17 (1) A for-profit or not-for-profit sole proprietorship, partnership,
18 association or corporation domiciled in Kansas, or any for-profit or not-
19 for-profit corporation, even if a wholly owned subsidiary of a foreign
20 corporation, that:

21 (A) Is authorized to and does business primarily in Kansas or
22 substantially all of its production in Kansas;

23 (B) paid, during the tax year for which tax credits or benefits are
24 claimed pursuant to this act, at least 2,080 hours of earned income to
25 eligible employees directly or provides 2,080 hours of work for eligible
26 employees through subcontracting with other certified tax weight-loss
27 businesses;

28 (C) offers to contribute at least 70% of the premium cost for
29 individual health insurance coverage for each full time employee; and

30 (D) pays all its employees at least the minimum wage required by
31 law;

32 (2) a "certified business" as defined in K.S.A. 75-3740, and
33 amendments thereto; or

34 (3) a sheltered workshop that converts to become a certified tax
35 weight-loss business by meeting the following requirements:

36 (A) It is located in Kansas;

1 (B) it employs an integrated workforce consisting of persons with
2 developmental or intellectual disabilities and at least 50% non-disabled
3 persons who are not staff paid to provide support or services to employees
4 with developmental or intellectual disabilities;

5 (C) it does not employ any staff for the purpose of providing support
6 or services to persons with developmental or intellectual disabilities;

7 (D) it pays all employees at least the minimum wage, offers health
8 insurance coverage and pays at least 70% of the health insurance premium;

9 (E) it provides eligible employees an average of at least 20 hours per
10 week of work for at least 40 weeks of the taxable year, excepting
11 employees terminated for cause;

12 (F) it does not permit use of its facilities for unpaid day service
13 activities; and

14 (G) it is separately organized or incorporated from any community
15 services provider and, if located on the same premises or sharing business
16 facilities with a community services provider, does not share the same
17 business space with the community services provider.

18 (b) "Community services provider" means an association or
19 organization licensed by the Kansas department for aging and disability
20 services and whose purpose is to provide support and services relating to
21 the ability to work and live in the community to persons who, without such
22 support and services, would be unable to or have significant difficulty
23 maintaining employment or living in the community. "Community services
24 provider" does not include an employer of the persons for whom services
25 are provided.

26 (c) "Competitive employment" means work:

27 (1) In the competitive labor market that is performed on a full-time or
28 part-time basis in an integrated setting; and

29 (2) for which a person is compensated at or above the minimum
30 wage, but not less than the customary wage and level of benefits paid by
31 the employer for the same or similar work performed by persons who are
32 not disabled.

33 (d) "Developmental disability" has the meaning provided in K.S.A.
34 39-1803, and amendments thereto.

35 (e) "Earned income" means income derived from working and
36 earning wages paid by a certified weight-loss business to an eligible
37 employee for competitive employment in an integrated setting. "Earned
38 income" does not include paid vacation, leave or sick leave.

39 (f) "Unearned income" means income, whether in cash or in-kind,
40 that is not compensation for work received from public sources for which
41 the recipient is eligible on the basis of financial need, including medicaid,
42 food stamps, supplemental security income, temporary assistance for
43 needy families, general assistance, earned income credit, the low income

1 energy assistance program, and section 8, and other forms of public
2 housing assistance. "Unearned income" shall not include funds or other
3 support from home and community-based services programs.

4 (g) "Eligible individual" means an individual who would like to
5 decrease the individual's reliance upon unearned income. Eligible
6 individuals may include persons with intellectual or developmental
7 disabilities.

8 (h) "Integrated setting" means, with respect to employment, a setting
9 typically found in the community in which tax weight-loss program
10 applicants, disabled eligible individuals or disabled eligible employees
11 interact with non-disabled individuals, other than non-disabled individuals
12 who are providing services to those applicants, eligible individuals or
13 employees, to the same extent that non-disabled individuals in comparable
14 positions interact with other non-disabled individuals.

15 (i) "Sub-contract" means components of work that are outsourced by
16 a manufacturing or other business enterprise that may or may not be a
17 certified tax weight-loss business to a certified tax weight-loss business in
18 order to reduce costs for the business enterprise that outsources the work.

19 (j) "Sheltered workshops" means work centers that provide vocational
20 training and paid work opportunities for people who have intellectual or
21 development disabilities. A "sheltered workshop" is not eligible for the
22 provisions of this act unless the sheltered workshop meets all requirements
23 for conversion to a certified tax weight loss business as set forth in
24 subsection (a)(3).

25 (k) "Tax subsidy-reliant individual" means an eligible individual who
26 relies primarily upon unearned income for such individual's sustenance or
27 shelter.

28 (l) "Tax weight" of a tax subsidy-reliant individual or eligible
29 employee means the sum of:

30 (1) The home and community-based services and medicaid-waiver
31 funding or other government funding received per person served by the
32 community services provider serving the individual to pay for staffing and
33 overhead costs;

34 (2) the amount of social security disability or supplemental security
35 income received by the individual;

36 (3) the dollar amount of food stamps received by the individual;

37 (4) the subsidy cost of subsidized housing provided to the individual;
38 and

39 (5) an average cost figure for medical costs for the individual.

40 (m) "Tax weight loss" means the reduction in tax weight of a tax
41 subsidy reliant individual or eligible employee as the result of earned
42 income received by the individual from employment with a certified tax
43 weight-loss business.

1 (n) "Eligible employee" means a tax subsidy-reliant individual
2 employed by a certified tax weight-loss business during the taxable year,
3 who has agreed in writing to provide information on a confidential basis to
4 the individual's community service provider and the department of
5 revenue, as necessary, to enable calculation of benefits sought by the
6 employing certified tax weight-loss business under section 3 or 4, and
7 amendments thereto. An eligible employee must perform duties in Kansas
8 in connection with the operation of the certified tax weight-loss business
9 on: (1) A regular, full-time basis; or (2) a part-time basis, provided such
10 person is customarily performing such duties at least 20 hours per week
11 throughout the taxable year. An eligible employee does not include an
12 individual whose cumulative tax weight for the preceding tax year has
13 been determined by the secretary to be less than \$10,000. An eligible
14 employee who has home and community-based funding for services may
15 receive such services while employed by a certified tax weight-loss
16 business, including on the premises of a certified tax weight-loss business
17 employing the eligible employee. All services must be provided by a
18 community services provider that does not employ the eligible employee
19 receiving services.

20 (o) "Taxpayer" means a certified tax weight-loss business that is
21 authorized to do business in the state of Kansas and is subject to income
22 tax liability imposed against such taxpayer pursuant to article 32 of chapter
23 79 of the Kansas Statutes Annotated, and amendments thereto.

24 Sec. 3. (a) A taxpayer employing an eligible employee or providing
25 work for an eligible employee by means of a subcontract with a certified
26 tax weight-loss business employing the eligible employee and approved by
27 the secretary pursuant to section 7, and amendments thereto, shall be
28 entitled to a credit against the income tax liability imposed against such
29 taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes
30 Annotated, and amendments thereto, as provided herein.

31 (b) To be eligible to receive the credit, the taxpayer shall provide
32 competitive employment in an integrated setting to one or more eligible
33 employees of at least 2,080 earned work hours in total in the tax year for
34 which the credit is claimed, either directly or through entering into a
35 subcontract with another certified tax weight-loss business that performs
36 the work with eligible employees.

37 (c) No credit shall be provided for:

38 (1) The employment of an eligible employee who displaces any other
39 individual from employment, except persons discharged for cause; or

40 (2) the employment of an eligible employee for less than one year,
41 unless the person voluntarily leaves the employment, becomes disabled
42 such that the individual can no longer meet the requirements of the
43 position with accommodation as provided by state or federal law, or is

1 terminated for cause.

2 (d) If the eligible employee leaves the employment of the taxpayer
3 voluntarily, becomes disabled or is terminated for cause in less than one
4 year, the credit shall be reduced by the proportion of the year not worked.

5 (e) The tax credit shall be calculated by the department of revenue in
6 cooperation with the community services provider providing supports and
7 services to the eligible employee or employees. The credit shall be the
8 amount of tax weight that is reduced during the tax year as a result of
9 income received by the eligible employee or employees from the
10 employment. The community services provider providing supports and
11 services for the eligible employee or employees shall provide the
12 department of revenue with appropriate information as necessary for the
13 department of revenue to determine the credit or credits to be permitted the
14 taxpayer. A certified tax weight-loss business that provides work for an
15 eligible employee employed by another certified tax weight-loss business
16 by subcontracting the work out to such other certified tax weight-loss
17 business shall be solely entitled to the tax credit.

18 (f) The tax credit shall be deducted from the taxpayer's tax liability
19 for the taxable year in which the tax weight reduction is made by the
20 taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax
21 liability for the taxable year, the amount thereof which exceeds the tax
22 liability may be carried over for deduction from the taxpayer's tax liability
23 in the next succeeding taxable year or years until the total amount of the
24 tax credit has been deducted from the tax liability, except that no such tax
25 credit shall be carried over for deduction after the fourth taxable year
26 succeeding the taxable year in which the tax weight reduction is made.

27 Sec. 4. (a) In lieu of the tax credit pursuant to section 3, and
28 amendments thereto, any certified tax weight-loss business approved by
29 the secretary for benefits pursuant to section 7, and amendments thereto,
30 that employs an eligible employee in an integrated setting at competitive
31 wages, either directly or through subcontracting work out to another
32 certified tax weight-loss business that performs the work with eligible
33 employees, shall be eligible to receive a tax benefit in the amount of \$5 for
34 each earned income hour worked by an eligible employee as permitted by
35 this section. A certified tax weight-loss business that provides work for an
36 eligible employee employed by another certified tax weight-loss business
37 by subcontracting the work out to such other certified tax weight-loss
38 business shall be solely entitled to the tax benefit under this section.

39 (b) No benefit shall be provided for:

40 (1) The earned income hours due to employment of an eligible
41 employee who displaces any other individual from employment, except
42 persons discharged for cause; or

43 (2) the earned income hours from employment of an eligible

1 employee for less than one year, unless the person voluntarily leaves the
2 employment, becomes disabled such that the individual can no longer meet
3 the requirements of the position with accommodation as provided by state
4 or federal law, or is terminated for cause.

5 (c) The tax benefit shall be calculated by the department of revenue in
6 cooperation with the community services provider providing supports and
7 services to the eligible employee or employees.

8 (d) The tax benefit may be applied by the certified tax weight-loss
9 business by one of the following means selected by the certified tax
10 weight-loss business:

11 (1) The certified tax weight-loss business may retain \$5 from the total
12 Kansas payroll withholding taxes to be remitted by the certified tax
13 weight-loss business to the state of Kansas, pursuant to the provisions of
14 the Kansas withholding and declaration of estimated tax act, K.S.A. 79-
15 3294 et seq., and amendments thereto, for each earned income hour
16 worked by an eligible employee until the eligible employee's tax weight,
17 as determined by the secretary, becomes less than \$10,000.

18 (2) Alternatively, for tax years beginning after December 31, 2017,
19 the certified tax weight-loss business may request reimbursement from the
20 secretary for Kansas property taxes or Kansas sales or use taxes paid in the
21 preceding tax year in an amount of \$5 for each earned-income hour
22 worked by an eligible employee during the preceding tax year.
23 Reimbursement shall be made by the secretary from the Kansas tax
24 weight-loss fund upon approval by the secretary or secretary's designee.

25 (e) (1) There is hereby created in the state treasury the Kansas tax
26 weight-loss fund. The secretary shall administer the fund. All awards by
27 the secretary from the fund shall be for the purpose of reimbursing Kansas
28 property taxes or Kansas sales or use taxes paid by a certified tax weight-
29 loss business as permitted by this section in accordance with the provisions
30 of this act and shall be made in accordance with appropriation acts upon
31 warrants of the director of accounts and reports issued pursuant to
32 vouchers approved by the secretary.

33 (2) The secretary shall determine the total tax weight loss achieved by
34 certified tax weight-loss businesses in Kansas in tax year 2017, and for
35 each succeeding tax year. Subject to appropriation acts, an amount
36 equivalent to 75% of the total tax weight loss as determined by the
37 secretary for each tax year shall be transferred by the director of accounts
38 and reports from the state general fund to the credit of the Kansas tax
39 weight loss fund for the next succeeding fiscal year, beginning with the
40 transfer for fiscal year 2019.

41 Sec. 5. On and after July 1, 2016, the rate of the tax imposed by
42 K.S.A. 79-3603, and amendments thereto, upon the sale at retail of
43 tangible personal property, as defined in K.S.A. 79-3602, and amendments

1 thereto, that is determined by the secretary to be primarily produced,
2 packaged or assembled by a certified tax weight-loss business as defined
3 in section 1, and amendments thereto, shall be 0%.

4 Sec. 6. A certified tax weight-loss business may engage a third-party
5 community services provider to provide supports and services for the
6 eligible employees of the certified tax weight-loss business at the premises
7 of the certified tax weight-loss business to ensure the eligible employees
8 are able to maintain their employment.

9 Sec. 7. (a) Any certified tax weight-loss business meeting the
10 requirements of this act may apply to the secretary of revenue for the tax
11 credits, benefits or sales tax exemption as provided and permitted by
12 sections 3, 4 and 5, and amendments thereto. The application shall be
13 submitted on a form or forms and in the manner prescribed by the
14 secretary. The application process and forms shall be simplified to the
15 extent possible in the judgment of the secretary for the sake of ease of
16 participation of the prospective certified tax weight-loss business and
17 eligible employee and the community service provider.

18 (b) The application shall include:

19 (1) Information showing that the business is a certified tax weight-
20 loss business and eligible to receive the tax credit, benefit or sales tax
21 exemption;

22 (2) information showing the number of eligible employees, number
23 of earned-income hours to be worked by eligible employees, product
24 production and sales information and any other information as requested
25 by the secretary to enable the secretary to estimate, calculate or approve
26 the requested tax credit, benefit or sales tax exemption; and

27 (3) such other information as may be necessary for the secretary to
28 administer this act, determine eligibility and produce the reports required
29 by this act.

30 (c) The secretary may either approve or disapprove the application.
31 Upon approval of an application for a tax credit, benefit or sales tax
32 exemption, the secretary may enter into an agreement with the certified tax
33 weight-loss business. Any certified tax weight-loss business whose
34 application is approved shall be eligible to receive the tax credit or benefit
35 under this act as of the date such certified tax weight-loss business enters
36 into the agreement with the secretary.

37 (d) The secretary may require a certified tax weight-loss business that
38 has been determined eligible and approved by the secretary for a credit,
39 benefit or sales tax exemption to provide reports or additional information
40 as determined necessary by the secretary at regular intervals or at such
41 time or times as determined by the secretary, including, but not limited to:

42 (1) The amount of Kansas payroll withholding tax being retained by
43 the certified tax weight-loss business; or

1 (2) such other information as may be required by the secretary to
2 ensure eligibility and that the payroll withholding tax is being properly
3 retained and the requirements and provisions of this act are met.

4 (e) The contents of completed forms shall be confidential as
5 otherwise provided by Kansas or federal law.

6 (f) The agreement between the certified tax weight-loss business and
7 the secretary shall be entered into before any credit, benefit or sales tax
8 exemption may be provided to the certified tax weight-loss business under
9 this act, and shall specify that should the certified tax weight-loss business
10 fail to comply with the terms and conditions set forth in the agreement, or
11 fail to comply with the provisions set forth in this act, the secretary may
12 terminate the agreement, and the certified tax weight-loss business shall
13 not be entitled to any further credit, benefit or sales tax exemption
14 provided under this act and shall be required to remit to the state an
15 amount equal to the aggregate Kansas payroll withholding taxes retained
16 by the certified tax weight-loss business, or remitted to the certified tax
17 weight-loss business by a third party, or the amount of income tax credit
18 received, or the property or sales or use tax reimbursements received by
19 the certified tax weight-loss business from the Kansas tax weight-loss fund
20 as of the date the agreement is terminated.

21 (g) The secretary may also enter into an agreement with a third-party
22 community services provider providing supports and services to eligible
23 employees of the certified tax weight-loss business applying for a tax
24 incentive under this act whereby the community services provider shall
25 provide the secretary with tax weight-loss information that is necessary to
26 enable the secretary to calculate the credit or benefit. Such agreement shall
27 provide for confidentiality of the tax weight-loss information. No tax
28 weight-loss information shall be provided by a third-party community
29 services provider to the department unless a written consent to the release
30 of such information has been made by the eligible employee.

31 Sec. 8. The secretary of revenue shall conduct at least an annual
32 review of the activities undertaken by a certified tax weight-loss business
33 receiving tax credits, benefits or a sales tax exemption to ensure that the
34 certified tax weight-loss business is in compliance with the provisions of
35 this act, any rules and regulations adopted by the secretary and the
36 agreement with the secretary described in section 7, and amendments
37 thereto. The books and records concerning employment and wages of any
38 eligible employee for which the certified tax weight-loss business has
39 received or is claiming a tax credit or benefit shall be available for
40 inspection by the secretary of revenue or the secretary's duly authorized
41 agents or employees at all times during business hours. In addition, a
42 certified tax weight-loss business that has obtained an exemption from
43 sales tax on the retail sale of tangible personal property pursuant to this act

1 shall make available all books and records regarding work, production and
2 sales for inspection by the secretary of revenue or the secretary's
3 authorized agents or employees at all times during business hours. The
4 department of revenue may audit a certified tax weight-loss business or a
5 community services provider for compliance with the provisions of this
6 act.

7 Sec. 9. The secretary of revenue shall transmit annually to the
8 governor and to the legislature a report, based on information received
9 from each certified tax weight-loss business receiving tax credits or
10 benefits and from community service providers providing supports and
11 services, describing the following:

- 12 (a) The number of eligible tax subsidy-reliant individuals employed;
- 13 (b) the wages paid for such employees;
- 14 (c) the estimated number of earned-income hours worked by such
15 employees;
- 16 (d) the annual amount of tax credits and benefits provided under this
17 act; and
- 18 (e) the estimated aggregate tax weight loss achieved.

19 Sec. 10. (a) The tax weight, tax weight loss and underlying
20 information utilized to make such determinations, where identifiable to an
21 eligible employee, shall be confidential and not subject to disclosure under
22 the Kansas open records act. It shall be unlawful for any person to disclose
23 such information, except for disclosures made for purposes of carrying out
24 the requirements of this act to persons who have been authorized to
25 receive such information by the community services provider or the
26 secretary of revenue. Disclosure of such information to a person not
27 authorized to receive such information shall constitute a class A nonperson
28 misdemeanor, punishable upon conviction in accordance with K.S.A. 21-
29 6602 or 21-6611, and amendments thereto. The provisions of this
30 subsection shall expire on July 1, 2021, unless the legislature reviews and
31 reenacts this provision pursuant to K.S.A. 45-229, and amendments
32 thereto, prior to July 1, 2021.

33 (b) Aggregate tax weight and tax weight-loss data and aggregate
34 underlying financial information utilized to make such determinations may
35 be disclosed where no personal identifying information is included in such
36 data and the identification of an eligible employee or tax subsidy-reliant
37 individual based on such data or the association of such data with an
38 eligible employee or tax subsidy-reliant individual would not reasonably
39 be possible.

40 (c) Nothing in this act shall be construed to allow disclosure of the
41 amount of income or any particulars set forth or disclosed in any report,
42 return, federal return or federal return information, where such disclosure
43 is prohibited by the federal internal revenue code as in effect on September

1 1, 1996, related federal internal revenue rules or regulations, or other
2 federal law, or the disclosure of information pertaining to an eligible
3 employee where such disclosure is otherwise prohibited by federal law.

4 Sec. 11. The secretary of revenue is authorized to adopt such rules
5 and regulations as necessary to carry out the provisions of this act.

6 Sec. 12. This act shall take effect and be in force from and after its
7 publication in the statute book.