

House Committee on Taxation

Testimony in Opposition to House Bill 2395

Presented by Eric Stafford, Vice President of Government Affairs

Tuesday, March 16, 2021

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state, and also serves as the state affiliate of the National Retail Federation through our Kansas Retail Council.

The Kansas Chamber appreciates the opportunity to testify in opposition to House Bill 2395, which would require marketplace facilitators to collect and remit sales tax to the State of Kansas. While we support the policy of leveling the playing field between brick and mortar and online out-of-state retailers, HB 2395 as written has several areas of concern.

In June 2018, the U.S. Supreme Court case *South Dakota v. Wayfair* was a monumental decision that granted states the ability to collect sales tax for online purchases, with some restrictions. The Court provided a checklist of factors present in South Dakota law that strongly suggested why it would be constitutional under this standard:

1. Safe harbor: Exclude “those who transact only limited business” in the state. (South Dakota’s is \$100,000 in sales or 200 transactions.)
2. No retroactive collection.
3. Single state-level administration of all sales taxes in the state.
4. Uniform definitions of products and services.
5. Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
6. Software: access to sales tax administration software provided by the state.
7. Immunity: sellers who use the software are not liable for errors derived from relying on it.

(Items three through seven are accomplished as Kansas is a participating state of the streamlined sales tax agreement)

HB 2395 is missing one of the most important elements- a safe harbor threshold to exclude “those who transact only limited business in the state.” There has been debate on whether or not to include a threshold, but you will see at the end of this testimony a summary of the 50 states and their marketplace facilitator laws. **Not one state has a threshold below \$100,000.** To quote our state’s Attorney General before this committee last year: “The further you deviate from South Dakota’s law, the more inviting you become to litigation.

Our second major concern with this bill can be found on page 5, Section 7 (b):

“(b) Beginning on and after July 1, 2021, the collection and remittance obligations of a marketplace facilitator under this act also apply to **any other taxes and fees**, as defined under this section, that are imposed on a retail sale made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller has a tax collection obligation.”

We have strong concerns over language which could expose retailers to unknown liabilities from broad language of “other taxes and fees.”

In closing, we introduced Senate Bill 50 and House Bill 2173 with support from the retail industry that came from NCSL model language. We would urge this committee to support either of those two proposals and reject House Bill 2395.

Thank you for the opportunity to speak in opposition to House Bill 2395 and I’m happy to answer questions at the appropriate time.

Summary of US Marketplace Facilitator Laws

State	Threshold	Trigger	
Alabama	\$250,000	Sales only	
Alaska	\$100,000	Sales or 200 transactions	
Arizona	\$100,000	Sales only	
Arkansas	\$100,000	Sales or 200 transactions	
California	\$500,000	Sales only	
Colorado	\$100,000	Sales only	
Connecticut	\$100,000	Sales and 200 transactions	
Delaware	No sales tax		
Florida	No law yet		
Georgia	\$100,000	Sales or 200 transactions	
Hawaii	\$100,000	Sales or 200 transactions	
Idaho	\$100,000	Sales only	
Illinois	\$100,000	Sales or 200 transactions	
Indiana	\$100,000	Sales or 200 transactions	
Iowa	\$100,000	Sales only	
Kansas (SB 50 proposed)	\$100,000	Sales only	
Kentucky	\$100,000	Sales or 200 transactions	
Louisiana	\$100,000	Sales or 200 transactions	
Maine	\$100,000	Sales or 200 transactions	
Maryland	\$100,000	Sales or 200 transactions	
Massachusetts	\$100,000	Sales only	
Michigan	\$100,000	Sales or 200 transactions	
Minnesota	\$100,000	Sales or 200 transactions	
Mississippi	\$250,000	Sales only	
Missouri	No law yet		
Montana	No sales tax		
Nebraska	\$100,000	Sales or 200 transactions	

Nevada	\$100,000	Sales or 200 transactions	
New Hampshire	No sales tax		
New Jersey	\$100,000	Sales or 200 transactions	
New Mexico	\$100,000	Sales only	
New York	\$500,000	Sales and 100 transactions	
North Carolina	\$100,000	Sales or 200 transactions	
North Dakota	\$100,000	Sales only	
Ohio	\$100,000	Sales or 200 transactions	
Oklahoma	\$100,000	Sales only	
Oregon	No sales tax		
Pennsylvania	\$100,000	Sales only	
Rhode Island	\$100,000	Sales or 200 transactions	
South Carolina	\$100,000	Sales only	
South Dakota	\$100,000	Sales or 200 transactions	
Tennessee	\$100,000	Sales only	(formerly \$500,000)
Texas	\$500,000	Sales only	
Utah	\$100,000	Sales or 200 transactions	
Vermont	\$100,000	Sales or 200 transactions	
Virginia	\$100,000	Sales or 200 transactions	
Washington	\$100,000	Sales only	
West Virginia	\$100,000	Sales or 200 transactions	
Wisconsin	\$100,000	Sales only after February 2021	
Wyoming	\$100,000	Sales or 200 transactions	
Washington, D.C.	\$100,000	Sales or 200 transactions	