

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 14, 2011, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

SB 97 - Concerning courts; relating to court fees and costs; relating to the judicial branch surcharge fund

Matt Sterling, Assistant Staff Revisor, provided an overview for the committee.

Representative Patton made the motion to report SB 97 favorably for passage. Representative Brookens seconded the motion.

Representative Ryckman made the substitute motion to amend the bill to delay the expansion of the Court of Appeals from thirteen to fourteen judges, for a year, until December 31, 2012, by adding a new section 19 on page 36. (Attachment 1) Representative Patton seconded the motion. Motion carried.

Representative Patton made the substitute motion to amend the bill back to the original version that extends the surcharge for one year, from July 1, 2011 through June 30, 2012. Representative Rubin seconded the motion. Motion carried.

Representative Patton made the motion to report SB 97 favorably for passage as amended. Representative Pauls seconded the motion. Motion carried.

HB 2335 - Kansas act against discrimination; disability amendments.

Matt Sterling, Assistant Staff Revisor, provided an overview for the committee.

Representative Patton made the motion to report HB 2335 favorably for passage. Representative Osterman seconded the motion.

Representative Pauls made the substitute motion to amend the bill by striking the following on page 3, lines 34-38, "Furthermore, it is the intent of the legislature that the Kansas act against discrimination is modeled after the Americans with disabilities act and shall be construed as a state law remedy consistent with the provisions of such federal law, except where the state law offers greater protections." Representative Kuether seconded the motion. Motion carried.

Representative Brookens made the substitute motion for a technical amendment to strike (a) on page 3, line 4, so the statute would read "K.S.A. 44-1002(j)(3).". Representative Patton seconded the motion. Motion carried.

Representative Patton made the motion to report HB 2335 favorably for passage as amended. Representative Rubin seconded the motion. Motion carried.

HB 2372 - Requiring verification of employment eligibility and making other amendments

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 14, 2011 in Room 346-S.

concerning immigration.

Representative Patton made the motion to report HB 2372 favorably for passage as amended. Representative Rubin seconded the motion.

Chairman Kinzer requested the staff distribute copies of a balloon that contained several amendments. (Attachment 2) Chairman Kinzer reviewed and explained in detail each of the items for the committee.

Chairman Kinzer made the substitute motion to amend the bill with the balloon. Representative Patton seconded the motion.

After further discussion regarding New Section 1, (d), of the balloon on page 1, it was agreed by the first and the second to strike the language “~~Good faith shall not include inadvertent errors committed by subordinate personnel and unknown to the principals of the business entity when made~~”, and insert “A business entity shall not be deemed to have violated the requirements of good faith, based upon inadvertent errors committed by subordinate personnel, and unknown to the principals of the business entity when made.”

Much discussion followed regarding various concerns.

Chairman Kinzer provided a summary of the motion to amend. Motion failed.

Representative Rubin made the substitute motion to amend with a balloon (Attachment 3), and in addition, included several items from the previous failed amendment as follows (Attachment 4):

- New Section 1, all the definitions, including the amended “good faith” language of the failed amendment and anyplace these definitions are used.
- New Section 1(a), line 10, include the “by provision of a signed e-verify program memorandum of understanding” and delete the comma and add the word “or”
- New Section 1(b), use the same as in the failed amendment
- New Section 1(c), do not use the “written statement” in his amendment and instead use the “acts in good faith to obtain” from the failed amendment.
- Include all the technical changes on page 2 of the failed amendment
- Page 2, (d), line 20, include from the failed amendment, “governmental entity: (1) Upon a first violation, for a period of up to three years” and insert a period, and, delete lines 20 through 23.
- Page 2, (2), line 36, include from the failed amendment, “for a period of not less than three years” and insert a period, and delete lines 36 through 39.
- New Section 2, page 3, add all of the changes from the failed amendment
- Page 4, add all of the changes from the failed amendment
- Page 5, include the deletion of (h), (i) and (j), and re-letter subsections accordingly, from the failed amendment, and include all the other insertions from the failed amendment.
- Page 5, New Sec. 3 (a), shows changing the word “person” to “employer” and is now amended to show “business entity” on the Rubin amendment.
- Pages 6, 7, include changes shown on the failed amendment
- On the new Rubin amendment, Page 8, Sec. 9, line 40, add the word “other” to the insertion to read “other than violations of traffic laws or ordinances”

Representative Holmes seconded the motion.

Representative Colloton made the substitute motion to table the bill. Representative Osterman seconded the motion. Motion carried.

The next meeting is scheduled for March 15, 2011.

The meeting was adjourned at 5:04 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 3-14-11

[illegible]

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 97

By Committee on Judiciary

2-3

1 AN ACT concerning courts; relating to court fees and costs; relating to
2 the judicial branch surcharge fund; docket fees for expungement of
3 records; **court of appeals**; amending Section 254 of chapter 136 of
4 the 2010 Session Laws of Kansas and K.S.A. 2010 Supp. 8-2107, 8-
5 2110, **20-3002**, 22-2410, 23-108a, 28-170, 28-172a, 28-177, 28-178,
6 38-2215, 38-2312, 38-2314, 59-104, 60-1621, 60-2001, 60-2203a,
7 61-2704 and 61-4001 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 2010 Supp. 8-2107 is hereby amended to read as
11 follows: 8-2107. (a) (1) Notwithstanding any other provisions of the
12 uniform act regulating traffic on highways, when a person is stopped by
13 a police officer for any of the offenses described in subsection (d) and
14 such person is not immediately taken before a judge of the district
15 court, the police officer may require the person stopped, subject to the
16 provisions of subsection (c), to deposit with the officer a valid Kansas
17 driver's license in exchange for a receipt therefor issued by such police
18 officer, the form of which shall be approved by the division of vehicles.
19 Such receipt shall be recognized as a valid temporary Kansas driver's
20 license authorizing the operation of a motor vehicle by the person
21 stopped until the date of the hearing stated on the receipt. The driver's
22 license and a written copy of the notice to appear shall be delivered by
23 the police officer to the court having jurisdiction of the offense charged
24 as soon as reasonably possible. If the hearing on such charge is
25 continued for any reason, the judge may note on the receipt the date to
26 which such hearing has been continued and such receipt shall be
27 recognized as a valid temporary Kansas driver's license until such date,
28 but in no event shall such receipt be recognized as a valid Kansas
29 driver's license for a period longer than 30 days from the date set for
30 the original hearing. Any person who has deposited a driver's license
31 with a police officer under this subsection (a) shall have such license
32 returned upon final determination of the charge against such person.

SB 97—Am. by SC

36

1 additional charge, not to exceed \$15 per docket fee, to fund the costs of
2 non-judicial personnel.

3 Sec. 19. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as
4 follows: 20-3002. (a) On and after January 1, 2008, through December
5 31, 2011, 2012, the court of appeals shall consist of 13 judges whose
6 positions shall be numbered one to 13. On and after January 1, 2012
7 2013, the court of appeals shall consist of 14 judges whose positions
8 shall be numbered one to 14. Judges of the court of appeals shall
9 possess the qualifications prescribed by law for justices of the supreme
10 court.

11 (b) Judges of the court of appeals shall be selected in the manner
12 provided by K.S.A. 20-3003 through 20-3010, and amendments
13 thereto. Each judge of the court of appeals shall receive an annual
14 salary in the amount prescribed by law. No judge of the court of
15 appeals may receive additional compensation for official services
16 performed by the judge. Each such judge shall be reimbursed for
17 expenses incurred in the performance of such judge's official duties in
18 the same manner and to the same extent justices of the supreme court
19 are reimbursed for such expenses.

20 (c) The supreme court may assign a judge of the court of appeals
21 to serve temporarily on the supreme court.

22 (d) Any additional court of appeals judge position created by this
23 section shall be considered a position created by the supreme court and
24 not a civil appointment to a state office pursuant to K.S.A. 46-234, and
25 amendments thereto.

26 Sec. 19, 20. Section 254 of chapter 136 of the 2010 Session Laws
27 of Kansas and K.S.A. 2010 Supp. 8-2107, 8-2110, 20-3002, 22-2410,
28 23-108a, 28-170, 28-172a, 28-177, 28-178, 38-2215, 38-2312, 38-
29 2314, 59-104, 60-1621, 60-2001, 60-2203a, 61-2704 and 61-4001 are
30 hereby repealed.

31 Sec. 20, 21. This act shall take effect and be in force from and
32 after its publication in the statute book.

33

Session of 2011

HOUSE BILL No. 2372

By Committee on Federal and State Affairs

3-4

1 AN ACT concerning immigration; amending K.S.A. 2010 Supp. 22-2802
2 and section 143 of chapter 136 of the 2010 Session Laws of Kansas
3 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) As a condition for the award of any contract or
7 grant in excess of \$5,000 by the state or by any municipality, as those
8 terms are defined in K.S.A. 75-6102, and amendments thereto, to a
9 business entity that employs one or more employees, the business entity
10 shall, by sworn affidavit signed before a notary and under penalty of
11 perjury, and by provision of documentation, affirm its enrollment and
12 good faith participation in the e-verify program operated by the United
13 States department of homeland security pursuant to the illegal
14 immigration reform and immigrant responsibility act of 1996, public law
15 104-208, or a successor electronic federal work authorization program
16 with respect to all employees eligible for verification under e-verify, or a
17 successor federal work authorization program, working in connection
18 with the contracted services.

19 (b) All public employers, including the state and any municipality,
20 as those terms are defined in K.S.A. 75-6102, and amendments thereto,
21 shall enroll and participate in good faith in the e-verify program operated
22 by the United States department of homeland security pursuant to the
23 illegal immigration reform and immigrant responsibility act of 1996,
24 public law 104-208, or a successor electronic federal work authorization
25 program.

26 (c) A general contractor or subcontractor of any tier shall not be
27 liable under this section when such general contractor or subcontractor
28 contracts with its direct subcontractor who violates subsection (a), if the
29 contract binding the contractor and subcontractor affirmatively states that
30 the direct subcontractor is not knowingly in violation of subsection (a)
31 and shall not henceforth be in such violation and the contractor or
32 subcontractor receives a sworn affidavit signed before a notary and under
33 the penalty of perjury attesting to the fact that the direct subcontractor is
34 enrolled and participates in good faith in the e-verify program operated
35 by the United States department of homeland security pursuant to the
36 illegal immigration reform and immigrant responsibility act of 1996,

New Section 1. As used in sections 1 through 7, and amendments thereto:

(a) "Alien" means an alien unlawfully present in the United States, as defined by tl
immigration laws of the United States, 8 U.S.C. § 1101 et seq.

(b) "Business entity" means any business that employs one or more employees.

(c) "E-verify program" means a program operated by the United States department or
homeland security pursuant to the illegal immigration reform and immigrant responsibility
act of 1996, public law 104-208, or a successor electronic federal work authorization
program.

(d) "Good faith" means, with honesty and intent, to fully comply with all applicable laws,
rules and regulations and standards. Good faith shall not include inadvertent errors
committed by subordinate personnel and unknown to the principals of the business entity
when made.

(e) "Governmental entity" means the state or municipality as such terms are defined in
K.S.A. 75-6102, and amendments thereto.

--Renumber the remaining sections accordingly.

a governmental entity

by provision of a signed e-verify program memorandum of understanding,

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acts in good faith to obtain

~~public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify, or a successor federal work authorization program, working in connection with the contracted services.~~

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(d) In addition to such penalties as may apply pursuant to section 128 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any other provision of law:

, any business entity violating the provisions

~~(1) Upon the first violation of the requirements of subsection (a) that a covered business entity affirm its enrollment and good faith participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify or a successor federal work authorization program, working in connection with the~~

requiring such

~~contracted services, the business entity shall be deemed in breach of contract and the state or municipality may terminate the contract and, upon notice and opportunity to be heard, suspend or debar the business entity from doing business with the state or municipality for a period of three years. Upon such termination, the state or municipality may, in addition to such other remedies as may be provided by law, withhold from amounts due or recover as liquidated damages up to 25% of the total amount of the contract with the business entity;~~

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(1) Upon a first violation, for a period of up to three years, and upon any contract termination, the governmental entity

~~(2) upon a second or subsequent violation of the requirements of subsection (a) that a covered business entity affirm its enrollment and good faith participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify or a successor federal work authorization program, working in connection with the contracted services, the business entity shall be deemed in breach of contract and the state or municipality may terminate the contract and, upon notice and opportunity to be heard, permanently suspend or debar the business entity from doing business with the state or municipality. Upon such termination, the state or municipality may, in addition to such other remedies as may be provided by law, withhold from amounts due or recover as liquidated damages up to 25% of the total amount due to the business entity.~~

and

, for a period of not less than three years, and upon any contract termination, the governmental entity

(e) In any civil action undertaken by the state or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, or by any business entity to enforce rights and remedies under this section, the state or municipality shall, if it is the prevailing party, be awarded its

any governmental entity or

shall

costs to include reasonable attorney fees associated with such action.

(f) Any business entity covered under this section which terminates an employee pursuant to a notification that said ~~employee is not~~ authorized to work in the United States, pursuant to that business entities' participation in the e-verify program ~~operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program~~, shall not be liable for any claims made against the business entity under the laws of the state of Kansas alleging that such termination was wrongful.

such

New Sec. 2. (a) No official or agency of the state ~~nor any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto~~, may adopt a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law, or that in any way limits communication between its officers and federal immigration officials in violation of 8 U.S.C. § 1373. If, in the judgment of the attorney general of Kansas, an official or agency of this state ~~or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto~~, is in violation of this subsection, ~~that agency or municipality~~ shall not be eligible to receive any funds, grants or appropriations from the state of Kansas until such violation has ceased and the attorney general has so certified.

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(b) All ~~state officials, agencies and personnel~~ shall fully comply with, and, to the full extent permitted by law, support the enforcement of federal law prohibiting the entry into, presence or residence in the United States of aliens in violation of federal immigration law.

governmental entity

(c) Upon any lawful stop, detention, or arrest made by a state, county or city law enforcement officer of this state in the enforcement of any state law or ordinance of a city or county of this state, where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct an investigation. Such determination shall be made by contacting the federal government pursuant to 8 U.S.C. § 1373(c) and relying upon any verification provided by the federal government. Any alien who is arrested and taken into custody shall have such alien's immigration status determined before the alien is released. The alien's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). At no point shall any law enforcement officer attempt to independently verify the immigration status of any alien. A law enforcement officer may not consider race, color or national origin in implementing the requirements of this section except to the extent

, but shall instead rely upon the verification provided by the federal government

permitted by the United States or Kansas constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer any of the following:

(1) An unexpired Kansas driver's license originally issued after April 20, 2007;

(2) an unexpired Kansas nondriver's identification card originally issued after April 20, 2007;

(3) a valid tribal enrollment card or other form of tribal identification; or

(4) if the entity requires proof of lawful presence in the United States before issuance, any valid United States federal, state or local government issued identification document.

(d) If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or assessment of any fine that is imposed, the United States bureau of immigration and customs enforcement shall be immediately notified.

(e) Notwithstanding any other law, a law enforcement agency may securely transport an alien whom the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this state.

(f) Except as provided in federal law, officials or agencies of this state or of any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

(1) Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state;

(2) verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(3) if the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act; or

(4) pursuant to 8 U.S.C. §§ 1373 and 1644.

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government entity or any governmental entity

(g) This section does not implement, authorize or establish the real ID act of 2005 (public law 109-13, division D; 119 stat. 302).

~~(h) A person who is a legal resident of this state may bring an action in district court to challenge any official or agency of this state or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than \$1,000 and not more than \$5,000 for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.~~

~~(i) A court shall collect the civil penalty prescribed in subsection (h) and remit the civil penalty to the state treasurer for deposit in the state general fund.~~

~~(j) The court may award court costs and reasonable attorney fees to the prevailing party in a proceeding brought pursuant to this section.~~

~~(k) Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.~~

(l) In the implementation of this section, the verification of any alien's immigration status shall occur by the federal government, pursuant to 8 U.S.C. § 1373(c). At no point shall any law enforcement officer attempt to independently verify the immigration status of any alien.

Reletter subsections accordingly

, but shall instead rely upon the verification provided by the federal government

(m) This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

New Sec. 3. (a) It is unlawful for a person to:

(1) Intentionally conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place in this state, including, but not limited to, any building or any means of transportation, if the person recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of federal law; or

by law enforcement officials

(2) intentionally encourage or induce an alien to come to or reside in this state if the person recklessly disregards the fact that such coming to, entering or residing in this state is or will be in violation of federal law.

the United States

(b) (1) Violation of this section is a class A misdemeanor, except as

provided in subsection (b)(2).

(2) Violation of this section that involves 10 or more aliens who are 18 years of age or older and who are unlawfully present in the United States is a severity level 8, person felony.

New Sec. 4. The attorney general shall as quickly as practicable enter into a cooperative agreement with the United States department of homeland security pursuant to 8 U.S.C. § 1357(g), to designate specific state law enforcement officers as officers qualified to exercise the enforcement powers of federal immigration officers in the United States. The attorney general may negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

New Sec. 5. (a) No alien who is unlawfully present in the United States shall receive any ~~state or local~~ public benefit, except for ~~state or local~~ public benefits that are required to be offered by 8 U.S.C. § 1621(b), or as provided in K.S.A. 2010 Supp. 76-731a, and amendments thereto.

(b) In addition to providing proof of other eligibility requirements, at the time of application for any ~~state or local~~ public benefit, an individual applicant who is 18 years of age or older shall provide affirmative proof that the individual applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States. Such affirmative proof shall include documentary evidence recognized by the division of motor vehicles when processing an application for a driver's license, as established in K.S.A. 8-240, and amendments thereto, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

(c) No ~~state, county, or local agency~~ shall provide any public benefit to any alien without first verifying that the alien is lawfully present in the United States and is a qualified alien, as described by to 8 U.S.C. §§ 1621 and 1641. Such verification shall occur through the systematic alien verification for entitlements program, operated by the United States department of homeland security.

(d) ~~State and local agencies~~ administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of aliens' lawful presence in the United States in furtherance of this section.

(e) As used in this section, "public benefit" means any grant, contract, loan or commercial or professional license provided by an agency of ~~state or local government~~ or any retirement, welfare, health, disability, housing, food assistance or unemployment benefit under which payments, assistance, credits or reduced rates or fees are provided, except that in no event shall the term "public benefit" include any license issued by the department of wildlife and parks, or licenses and identification

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Governmental entities

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cards issued by the division of motor vehicles.

New Sec. 6. (a) It is unlawful for any person to fail to complete or carry an alien registration document if the person is in violation of 8 U.S.C. §§ 1304(e) or 1306(a), and the person is an alien unlawfully present in the United States.

(b) Violation of this section is a class C misdemeanor. Any fine imposed for such violation shall not exceed \$100.

(c) In the enforcement of this section:

(1) An alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently verify the immigration status of any alien.

(2) A law enforcement official or agency may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States constitution and the Kansas constitution.

(d) This section shall not apply to a person who maintains authorization from the federal government to be present in the United States.

(e) Any record that relates to the immigration status of a person is admissible in court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record. A verification of an alien's immigration status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status.

New Sec. 7. If any provision of sections 1 through ~~6~~ and amendments thereto, is held to be unconstitutional under the United States or Kansas constitutions, that provision shall be severed from this act, and the other provisions of sections 1 through ~~6~~ and amendments thereto, shall remain valid and in effect.

Sec. 8. Section 143 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 143. (a) Dealing in false identification documents is knowingly reproducing, manufacturing, selling or offering for sale any identification document which:

(1) Simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and

(2) bears a fictitious name or other false information.

(b) Vital records identity fraud related to birth, death, marriage and divorce certificates is:

(1) Supplying false information intending that the information be

used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record without lawful authority and with the intent to deceive; or

(3) obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another a certified copy of a vital record, with the intent to deceive.

(c) (1) Vital records identity fraud is a severity level 8 7, nonperson felony.

(2) Dealing in false identification documents is a severity level 8 6, nonperson felony.

(d) The provisions of this section shall not apply to:

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto; or

(2) a person less than 18 years of age who uses the identification documents of another person to acquire:

(A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;

(B) a periodical, videotape or other communication medium that contains or depicts nudity;

(C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or

(D) an item that is prohibited by law for use or consumption by such person.

(e) As used in this section, "identification document" means any card, certificate or document or banking instrument including, but not limited to, credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

Sec. 9. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. *If the person charged with a crime is not a citizen or national of the United States, such person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). For the purposes of determining the grant of or issuance of an*

appearance bond, it shall be a rebuttable presumption that a person who has been verified by the federal government to be an alien unlawfully present in the United States is at risk of flight. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to paragraph (3). Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount

of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
 - (B) has a criminal history score category of G, H or I;
 - (C) has no prior history of failure to appear for any court appearances;
 - (D) has no detainer or hold from any other jurisdiction;
 - (E) has not been extradited from, and is not awaiting extradition to, another state; and
 - (F) has not been detained for an alleged violation of probation.
- (6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision.

Sec. 10. K.S.A. 2010 Supp. 22-2802 and section 143 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2372

By Committee on Federal and State Affairs

3-4

1 AN ACT concerning immigration; amending K.S.A. 2010 Supp. 22-2802
2 and section 143 of chapter 136 of the 2010 Session Laws of Kansas
3 and repealing the existing sections.
4

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

6 New Section 1. (a) As a condition for the award of any contract or
7 grant in excess of \$5,000 by the state or by any municipality, as those
8 terms are defined in K.S.A. 75-6102, and amendments thereto, to a
9 business entity that employs one or more employees, the business entity
10 shall, ~~by sworn affidavit signed before a notary and under penalty of~~
11 ~~perjury, and by provision of documentation, affirm its enrollment and~~
12 ~~good faith participation in the e-verify program operated by the United~~
13 ~~States department of homeland security pursuant to the illegal~~
14 ~~immigration reform and immigrant responsibility act of 1996, public law~~
15 ~~104-208, or a successor electronic federal work authorization program~~
16 ~~with respect to all employees eligible for verification under e-verify, or a~~
17 ~~successor federal work authorization program, working in connection~~
18 ~~with the contracted services.~~

enroll and participate in good faith

19 (b) All public employers, including the state and any municipality,
20 as those terms are defined in K.S.A. 75-6102, and amendments thereto,
21 shall enroll and participate in good faith in the e-verify program operated
22 by the United States department of homeland security pursuant to the
23 illegal immigration reform and immigrant responsibility act of 1996,
24 public law 104-208, or a successor electronic federal work authorization
25 program.

26 (c) A general contractor or subcontractor of any tier shall not be
27 liable under this section when such general contractor or subcontractor
28 contracts with its direct subcontractor who violates subsection (a), if the
29 contract binding the contractor and subcontractor affirmatively states that
30 the direct subcontractor is not knowingly in violation of subsection (a)
31 and shall not henceforth be in such violation and the contractor or
32 subcontractor receives a ~~sworn affidavit signed before a notary and under~~
33 ~~the penalty of perjury attesting to the fact that the direct subcontractor is~~
34 ~~enrolled and participates in good faith in the e-verify program operated~~
35 ~~by the United States department of homeland security pursuant to the~~
36 ~~illegal immigration reform and immigrant responsibility act of 1996,~~

written statement

public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify, or a successor federal work authorization program, working in connection with the contracted services.

(d) In addition to such penalties as may apply pursuant to section 128 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any other provision of law:

(1) Upon the first violation of the requirements of subsection (a) that a covered business entity affirm its enrollment and good faith participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify or a successor federal work authorization program, working in connection with the contracted services, the business entity shall be deemed in breach of contract and the state or municipality may terminate the contract and, upon notice and opportunity to be heard, suspend or debar the business entity from doing business with the state or municipality for a period of three years. ~~Upon such termination, the state or municipality may, in addition to such other remedies as may be provided by law, withhold from amounts due or recover as liquidated damages up to 25% of the total amount of the contract with the business entity;—~~

(2) upon a second or subsequent violation of the requirements of subsection (a) that a covered business entity affirm its enrollment and good faith participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify or a successor federal work authorization program, working in connection with the contracted services, the business entity shall be deemed in breach of contract and the state or municipality may terminate the contract and, upon notice and opportunity to be heard, permanently suspend or debar the business entity from doing business with the state or municipality. ~~Upon such termination, the state or municipality may, in addition to such other remedies as may be provided by law, withhold from amounts due or recover as liquidated damages up to 25% of the total amount due to the business entity.~~

(e) In any civil action undertaken by the state or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, or by any business entity to enforce rights and remedies under this section, the state or municipality shall, if it is the prevailing party, be awarded its

costs to include reasonable attorney fees associated with such action.

(f) Any business entity covered under this section which terminates an employee pursuant to a notification that said employee is not authorized to work in the United States, pursuant to that business entities' participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program, shall not be liable for any claims made against the business entity under the laws of the state of Kansas alleging that such termination was wrongful.

New Sec. 2. (a) No official or agency of the state nor any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, may adopt a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law, or that in any way limits communication between its officers and federal immigration officials in violation of 8 U.S.C. § 1373. If, in the judgment of the attorney general of Kansas, an official or agency of this state or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, is in violation of this subsection, that agency or municipality shall not be eligible to receive any funds, grants or appropriations from the state of Kansas until such violation has ceased and the attorney general has so certified.

(b) All state officials, agencies and personnel shall fully comply with, and, to the full extent permitted by law, support the enforcement of federal law prohibiting the entry into, presence or residence in the United States of aliens in violation of federal immigration law.

(c) Upon any lawful stop, detention, or arrest made by a state, county or city law enforcement officer of this state in the enforcement of any state law or ordinance of a city or county of this state, where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct an investigation. Such determination shall be made by contacting the federal government pursuant to 8 U.S.C. § 1373(c) and relying upon any verification provided by the federal government. Any alien who is arrested and taken into custody shall have such alien's immigration status determined before the alien is released. The alien's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). At no point shall any law enforcement officer attempt to independently verify the immigration status of any alien. A law enforcement officer may not consider race, color or national origin in implementing the requirements of this section except to the extent

other than traffic laws or ordinances or police checkpoint stops to enforce driving under the influence or seat belt laws or ordinances,

probable cause exists to believe

for any reason other than an alleged violation of traffic laws or ordinances

permitted by the United States or *Kansas constitution*. A person is presumed to not be an alien who is unlawfully present in the United States if the person has any of the following:

(1) An unexpired Kansas driver's license originally issued after April 20, 2007;

(2) an unexpired Kansas nondriver's identification card originally issued after April 20, 2007;

(3) a valid tribal enrollment card or other form of tribal identification; or

(4) if the entity requires proof of lawful presence in the United States before issuance, any valid United States federal, state or local government issued identification document.

(d) If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or assessment of any fine that is imposed, the United States bureau of immigration and customs enforcement shall be immediately notified.

other than traffic laws

(e) Notwithstanding any other law, a law enforcement agency may securely transport an alien whom the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this state.

(f) Except as provided in federal law, officials or agencies of this state or of any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

(1) Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state;

(2) verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(3) if the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act; or

(4) pursuant to 8 U.S.C. §§ 1373 and 1644.

(g) This section does not implement, authorize or establish the real ID act of 2005 (public law 109-13, division D; 119 stat. 302).

(h) A person who is a legal resident of this state may bring an action in district court to challenge any official or agency of this state or any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than \$1,000 and not more than \$5,000 for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

(i) A court shall collect the civil penalty prescribed in subsection (h) and remit the civil penalty to the state treasurer for deposit in the state general fund.

(j) The court may award court costs and reasonable attorney fees to the prevailing party in a proceeding brought pursuant to this section.

(k) Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

(l) In the implementation of this section, the verification of any alien's immigration status shall occur by the federal government, pursuant to 8 U.S.C. § 1373(c). At no point shall any law enforcement officer attempt to independently verify the immigration status of any alien.

(m) This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

New Sec. 3. (a) It is unlawful for a ~~person~~ to:

(1) Intentionally conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place in this state, including, but not limited to, any building or any means of transportation, if the person recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of federal law; or

(2) intentionally encourage or induce an alien to come to or reside in this state if the person recklessly disregards the fact that such coming to, entering or residing in this state is or will be in violation of federal law.

(b) (1) Violation of this section is a class A misdemeanor, except as

business entity
~~employer~~

provided in subsection (b)(2).

(2) Violation of this section that involves 10 or more aliens who are 18 years of age or older and who are unlawfully present in the United States is a severity level 8, person felony.

New Sec. 4. The attorney general shall as quickly as practicable enter into a cooperative agreement with the United States department of homeland security pursuant to 8 U.S.C. § 1357(g), to designate specific state law enforcement officers as officers qualified to exercise the enforcement powers of federal immigration officers in the United States. The attorney general may negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

New Sec. 5. (a) No alien who is unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that are required to be offered by 8 U.S.C. § 1621(b), or as provided in K.S.A. 2010 Supp. 76-731a, and amendments thereto.

(b) In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an individual applicant who is 18 years of age or older shall provide affirmative proof that the individual applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States. Such affirmative proof shall include documentary evidence recognized by the division of motor vehicles when processing an application for a driver's license, as established in K.S.A. 8-240, and amendments thereto, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

(c) No state, county, or local agency shall provide any public benefit to any alien without first verifying that the alien is lawfully present in the United States and is a qualified alien, as described by to 8 U.S.C. §§ 1621 and 1641. Such verification shall occur through the systematic alien verification for entitlements program, operated by the United States department of homeland security.

(d) State and local agencies administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of aliens' lawful presence in the United States in furtherance of this section.

(e) As used in this section, "public benefit" means any grant, contract, loan or commercial or professional license provided by an agency of state or local government, or any retirement, welfare, health, disability, housing, food assistance or unemployment benefit under which payments, assistance, credits or reduced rates or fees are provided, except that in no event shall the term "public benefit" include any license issued by the department of wildlife and parks, or licenses and identification

3-6

cards issued by the division of motor vehicles.

2 New Sec. 6. (a) It is unlawful for any person to fail to complete or
3 carry an alien registration document if the person is in violation of 8
4 U.S.C. §§ 1304(e) or 1306(a), and the person is an alien unlawfully
5 present in the United States.

6 (b) Violation of this section is a class C misdemeanor. Any fine
7 imposed for such violation shall not exceed \$100.

8 (c) In the enforcement of this section:

9 (1) An alien's immigration status shall be determined by verification
10 of the alien's immigration status with the federal government pursuant to
11 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to
12 independently verify the immigration status of any alien.

13 (2) A law enforcement official or agency may not consider race,
14 color or national origin in the enforcement of this section except to the
15 extent permitted by the United States constitution and the Kansas
16 constitution.

17 (d) This section shall not apply to a person who maintains
18 authorization from the federal government to be present in the United
19 States.

20 (e) Any record that relates to the immigration status of a person is
21 admissible in court without further foundation or testimony from a
22 custodian of records if the record is certified as authentic by the
23 government agency that is responsible for maintaining the record. A
24 verification of an alien's immigration status received from the federal
25 government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that
26 alien's status.

27 New Sec. 7. If any provision of sections 1 through 6, and
28 amendments thereto, is held to be unconstitutional under the United
29 States or Kansas constitutions, that provision shall be severed from this
30 act, and the other provisions of sections 1 through 6, and amendments
31 thereto, shall remain valid and in effect.

32 Sec. 8. Section 143 of chapter 136 of the 2010 Session Laws of
33 Kansas is hereby amended to read as follows: Sec. 143. (a) Dealing in
34 false identification documents is knowingly reproducing,
35 manufacturing, selling or offering for sale any identification
36 document which:

37 (1) Simulates, purports to be or is designed so as to cause others
38 reasonably to believe it to be an identification document; and

39 (2) bears a fictitious name or other false information.

40 (b) Vital records identity fraud related to birth, death, marriage and
41 divorce certificates is:

42 (1) Supplying false information intending that the information be

used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record without lawful authority and with the intent to deceive; or

(3) obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another a certified copy of a vital record, with the intent to deceive.

(c) (1) Vital records identity fraud is a severity level 7, nonperson felony.

(2) Dealing in false identification documents is a severity level 6, nonperson felony.

(d) The provisions of this section shall not apply to:

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto; or

(2) a person less than 18 years of age who uses the identification documents of another person to acquire:

(A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;

(B) a periodical, videotape or other communication medium that contains or depicts nudity;

(C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or

(D) an item that is prohibited by law for use or consumption by such person.

(e) As used in this section, "identification document" means any card, certificate or document or banking instrument including, but not limited to, credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

Sec. 9. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. *If the person charged with a crime is not a citizen or national of the United States, such person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). For the purposes of determining the grant of or issuance of an*

other

than violations of traffic laws or ordinances

appearance bond, it shall be a rebuttable presumption that a person who has been verified by the federal government to be an alien unlawfully present in the United States is at risk of flight. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to paragraph (3). Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount

of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
 - (B) has a criminal history score category of G, H or I;
 - (C) has no prior history of failure to appear for any court appearances;
 - (D) has no detainer or hold from any other jurisdiction;
 - (E) has not been extradited from, and is not awaiting extradition to, another state; and
 - (F) has not been detained for an alleged violation of probation.
- (6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision.

Sec. 10. K.S.A. 2010 Supp. 22-2802 and section 143 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

This is the Amendment Proposed by Chairman Kinzer.
The Amendment Failed & then Representative Rubin
included parts of this by
adding to his proposed
HOUSE BILL No. 2372 Amendment.

Proposed amendments
March 14, 2011.

House Judiciary
Date 3-14-11
Attachment # 4

By Committee on Federal and State Affairs

3-4

AN ACT concerning immigration; amending K.S.A. 2010 Supp. 22-2802 and section 143 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

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

New Section 1. (a) As a condition for the award of any contract or grant in excess of \$5,000 by the state or by any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, to a business entity that employs one or more employees, the business entity shall, by sworn affidavit signed before a notary and under penalty of perjury, and by provision of documentation, affirm its enrollment and good faith participation in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program with respect to all employees eligible for verification under e-verify, or a successor federal work authorization program, working in connection with the contracted services.

(b) All public employers, including the state and any municipality, as those terms are defined in K.S.A. 75-6102, and amendments thereto, shall enroll and participate in good faith in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program.

(c) A general contractor or subcontractor of any tier shall not be liable under this section when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection (a), if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection (a) and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit signed before a notary and under the penalty of perjury attesting to the fact that the direct subcontractor is enrolled and participates in good faith in the e-verify program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996.

New Section 1. As used in sections 1 through 7, and amendments thereto:

(a) "Alien" means an alien unlawfully present in the United States, as defined by the immigration laws of the United States, 8 U.S.C. § 1101 et seq.

(b) "Business entity" means any business that employs one or more employees.

(c) "E-verify program" means a program operated by the United States department of homeland security pursuant to the illegal immigration reform and immigrant responsibility act of 1996, public law 104-208, or a successor electronic federal work authorization program.

(d) "Good faith" means, with honesty and intent, to fully comply with all applicable laws, rules and regulations and standards. Good faith shall not include inadvertent errors committed by subordinate personnel and unknown to the principals of the business entity when made.

(e) "Governmental entity" means the state or municipality as such terms are defined in K.S.A. 75-6102, and amendments thereto.

--Renumber the remaining sections accordingly.

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vided in subsection (b)(2).

(2) Violation of this section that involves 10 or more aliens who are 18 years of age or older and who are unlawfully present in the United States is a severity level 8, person felony.

New Sec. 4. The attorney general shall as quickly as practicable enter into a cooperative agreement with the United States department of homeland security pursuant to 8 U.S.C. § 1357(g), to designate specific state law enforcement officers as officers qualified to exercise the enforcement powers of federal immigration officers in the United States. The attorney general may negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

New Sec. 5. (a) No alien who is unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that are required to be offered by 8 U.S.C. § 1621(b), or as provided in K.S.A. 2010 Supp. 76-731a, and amendments thereto.

(b) In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an individual applicant who is 18 years of age or older shall provide affirmative proof that the individual applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States. Such affirmative proof shall include documentary evidence recognized by the division of motor vehicles when processing an application for a driver's license, as established in K.S.A. 8-240, and amendments thereto, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

(c) No state, county, or local agency shall provide any public benefit to any alien without first verifying that the alien is lawfully present in the United States and is a qualified alien, as described by 8 U.S.C. §§ 1621 and 1641. Such verification shall occur through the systematic alien verification for entitlements program, operated by the United States department of homeland security.

(d) State and local agencies administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of aliens' lawful presence in the United States in furtherance of this section.

(e) As used in this section, "public benefit" means any grant, contract, loan or commercial or professional license provided by an agency of state or local government, or any retirement, welfare, health, disability, housing, food assistance or unemployment benefit under which payments, assistance, credits or reduced rates or fees are provided, except that in no event shall the term "public benefit" include any license issued by the department of wildlife and parks, or licenses and identification

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1 cards issued by the division of motor vehicles.

2 New Sec. 6. (a) It is unlawful for any person to fail to complete or
3 carry an alien registration document if the person is in violation of 8
4 U.S.C. §§ 1304(e) or 1306(a), and the person is an alien unlawfully
5 present in the United States.

6 (b) Violation of this section is a class C misdemeanor. Any fine
7 imposed for such violation shall not exceed \$100.

8 (c) In the enforcement of this section:

9 (1) An alien's immigration status shall be determined by verification
10 of the alien's immigration status with the federal government pursuant to
11 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to
12 independently verify the immigration status of any alien.

13 (2) A law enforcement official or agency may not consider race,
14 color or national origin in the enforcement of this section except to the
15 extent permitted by the United States constitution and the Kansas
16 constitution.

17 (d) This section shall not apply to a person who maintains
18 authorization from the federal government to be present in the United
19 States.

20 (e) Any record that relates to the immigration status of a person is
21 admissible in court without further foundation or testimony from a
22 custodian of records if the record is certified as authentic by the
23 government agency that is responsible for maintaining the record. A
24 verification of an alien's immigration status received from the federal
25 government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that
26 alien's status.

27 New Sec. 7. If any provision of sections 1 through ~~6~~ and
28 amendments thereto, is held to be unconstitutional under the United
29 States or Kansas constitutions, that provision shall be severed from this
30 act, and the other provisions of sections 1 through ~~6~~ and amendments
31 thereto, shall remain valid and in effect.

32 Sec. 8: Section 143 of chapter 136 of the 2010 Session Laws of
33 Kansas is hereby amended to read as follows: Sec. 143. (a) Dealing in
34 false identification documents is knowingly reproducing,
35 manufacturing, selling or offering for sale any identification
36 document which:

37 (1) Simulates, purports to be or is designed so as to cause others
38 reasonably to believe it to be an identification document; and

39 (2) bears a fictitious name or other false information.

40 (b) Vital records identity fraud related to birth, death, marriage and
41 divorce certificates is:

42 (1) Supplying false information intending that the information be

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to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record without lawful authority and with the intent to deceive; or

(3) obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another a certified copy of a vital record, with the intent to deceive.

(c) (1) Vital records identity fraud is a severity level 8, nonperson felony.

(2) Dealing in false identification documents is a severity level 8, nonperson felony.

(d) The provisions of this section shall not apply to:

(1) A person, less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto; or

(2) a person, less than 18 years of age who uses the identification documents of another person to acquire:

(A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;

(B) a periodical, videotape or other communication medium that contains or depicts nudity;

(C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or

(D) an item that is prohibited by law for use or consumption by such person.

(e) As used in this section, "identification document" means any card, certificate or document or banking instrument including, but not limited to, credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

Sec. 9. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. *If the person charged with a crime is not a citizen or national of the United States, such person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). For the purposes of determining the grant of or issuance of an*

1 appearance bond, it shall be a rebuttable presumption that a person who
2 has been verified by the federal government to be an alien unlawfully
3 present in the United States is at risk of flight. If the person is being
4 bound over for a felony, the bond shall also be conditioned on the
5 person's appearance in the district court or by way of a two-way
6 electronic audio-video communication as provided in subsection (14) at
7 the time required by the court to answer the charge against such person
8 and at any time thereafter that the court requires. Unless the magistrate
9 makes a specific finding otherwise, if the person is being bonded out for a
10 person felony or a person misdemeanor, the bond shall be conditioned on
11 the person being prohibited from having any contact with the alleged
12 victim of such offense for a period of at least 72 hours. The magistrate
13 may impose such of the following additional conditions of release as will
14 reasonably assure the appearance of the person for preliminary
15 examination or trial:

16 (a) Place the person in the custody of a designated person or
17 organization agreeing to supervise such person;

18 (b) place restrictions on the travel, association or place of abode of
19 the person during the period of release;

20 (c) impose any other condition deemed reasonably necessary to
21 assure appearance as required, including a condition requiring that the
22 person return to custody during specified hours;

23 (d) place the person under a house arrest program pursuant to K.S.A.
24 21-4603b, and amendments thereto; or

25 (e) place the person under the supervision of a court services officer
26 responsible for monitoring the person's compliance with any conditions
27 of release ordered by the magistrate.

28 (2) In addition to any conditions of release provided in subsection
29 (1), for any person charged with a felony, the magistrate may order such
30 person to submit to a drug abuse examination and evaluation in a public
31 or private treatment facility or state institution and, if determined by the
32 head of such facility or institution that such person is a drug abuser or
33 incapacitated by drugs, to submit to treatment for such drug abuse, as a
34 condition of release.

35 (3) The appearance bond shall be executed with sufficient solvent
36 sureties who are residents of the state of Kansas, unless the magistrate
37 determines, in the exercise of such magistrate's discretion, that requiring
38 sureties is not necessary to assure the appearance of the person at the time
39 ordered.

40 (4) A deposit of cash in the amount of the bond may be made in lieu
41 of the execution of the bond pursuant to paragraph (3). Except as
42 provided in paragraph (5), such deposit shall be in the full amount of the
43 bond and in no event shall a deposit of cash in less than the full amount

bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

(A) Is a resident of the state of Kansas;

(B) has a criminal history score category of G, H or I;

(C) has no prior history of failure to appear for any court appearances;

(D) has no detainer or hold from any other jurisdiction;

(E) has not been extradited from, and is not awaiting extradition to, another state; and

(F) has not been detained for an alleged violation of probation.

(6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

1 (9) The appearance bond shall set forth all of the conditions of
2 release.

3 (10) A person for whom conditions of release are imposed and who
4 continues to be detained as a result of the person's inability to meet the
5 conditions of release shall be entitled, upon application, to have the
6 conditions reviewed without unnecessary delay by the magistrate who
7 imposed them. If the magistrate who imposed conditions of release is not
8 available, any other magistrate in the county may review such conditions.

9 (11) A magistrate ordering the release of a person on any conditions
10 specified in this section may at any time amend the order to impose
11 additional or different conditions of release. If the imposition of
12 additional or different conditions results in the detention of the person,
13 the provisions of subsection (10) shall apply.

14 (12) Statements or information offered in determining the conditions
15 of release need not conform to the rules of evidence. No statement or
16 admission of the defendant made at such a proceeding shall be received
17 as evidence in any subsequent proceeding against the defendant.

18 (13) The appearance bond and any security required as a condition
19 of the defendant's release shall be deposited in the office of the magistrate
20 or the clerk of the court where the release is ordered. If the defendant is
21 bound to appear before a magistrate or court other than the one ordering
22 the release, the order of release, together with the bond and security shall
23 be transmitted to the magistrate or clerk of the court before whom the
24 defendant is bound to appear.

25 (14) Proceedings before a magistrate as provided in this section to
26 determine the release conditions of a person charged with a crime
27 including release upon execution of an appearance bond may be
28 conducted by two-way electronic audio-video communication between
29 the defendant and the judge in lieu of personal presence of the defendant
30 or defendant's counsel in the courtroom in the discretion of the court. The
31 defendant may be accompanied by the defendant's counsel. The defendant
32 shall be informed of the defendant's right to be personally present in the
33 courtroom during such proceeding if the defendant so requests.
34 Exercising the right to be present shall in no way prejudice the defendant.

35 (15) The magistrate may order the person to pay for any costs
36 associated with the supervision of the conditions of release of the
37 appearance bond in an amount not to exceed \$15 per week of such
38 supervision.

39 Sec. 10. K.S.A. 2010 Supp. 22-2802 and section 143 of chapter 136
40 of the 2010 Session Laws of Kansas are hereby repealed.

41 Sec. 11. This act shall take effect and be in force from and after its
42 publication in the statute book.