

SESSION OF 2007

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2367

As Amended by House Committee of the Whole

Brief*

HB 2367 would deny public state or local benefits to any alien unlawfully present in the United States, require employers to have employees complete I-9 forms and create penalties for employers who hire illegal aliens.

Public Benefits

Any applicant 18 years of age and older would have to provide proof that such applicant is a citizen or permanent resident of the United States or is lawfully present in the United States as provided by federal law, to receive public benefits such as welfare, health, retirement, food assistance, unemployment, postsecondary education, except when the benefits are allowed under federal law. Proof would include documentary evidence recognized by the Department of Revenue in processing an application for a driver's license, as well as any document issued by the federal government that confirms the applicant's lawful presence. Any applicant who cannot provide proof may sign a sworn affidavit attesting to United States citizenship or permanent resident status in order to receive temporary benefits. The affidavit would have to include the applicant's social security number and an explanation of penalties under state law for obtaining public assistance fraudulently. Temporary benefits would be received for 90 days or until such time as the applicant provides a birth certificate or the determination that a birth certificate does not exist.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Employment Eligibility I-9 Forms

Under the bill, employers would require employees to complete an I-9 form to verify the identity and employment eligibility of an employee. The employer would have to retain the I-9 forms for a period of three years and make the form available to state and federal officials upon request. Completion of an I-9 form would not be required by the following:

- Any person hired before November 7, 1986, and has been continuously employed by the same employer;
- Any person providing domestic services in a private household that are sporadic or intermittent;
- Any person providing services for the employer as an independent contractor; and
- Any person providing services for the employer under contract, subcontract or exchange entered into after November 7, 1986.

The bill would prohibit action against any employer who complies with the requirement of the I-9 form by any person, city, county or state official.

Penalties for Employing an Illegal Alien

The bill would provide the following penalties for knowingly employing an alien illegally within the territory of the United States:

- A class A nonperson misdemeanor; and
- On the second or subsequent conviction of a violation, in addition to any other sentence imposed, a person would be fined \$10,000.

The bill also would define “employment” to include subcontractors’ employees if the employer of the subcontractor has knowledge that the subcontractor is employing persons or subcontracting with person who are illegally within the territory of the United States.

Penalties on Employer Bids and Contracts

The bill would prohibit any state agency or unit of government from awarding a bid or contract to a bidder, contractor or employer who in the preceding five years has:

- Been convicted of violating state or federal law for hiring illegal aliens; or
- Been a party to a state agency proceeding in which a penalty or sanction was ordered for violation of state or federal law in hiring of illegal aliens.

Under the bill, any employer found in violation of state or federal law would be subject to administrative penalties and sanctions and forfeit or be liable for an amount equal to the total value of the state benefit received for a period of five years leading up to the date of guilt, but the penalty could not exceed the federal prescribed civil penalty.

Background

Proponents of the bill included: Representative Kinzer; a professor of Law, University of Missouri (Kansas City); representatives of Citizens for Immigration Reform and Federation for American Immigration Reform; and an individual.

A representative of Kansas Department of Health and Environment testified as neutral on the bill.

Opponents included: representatives of the Kansas Board of Regents, the Kansas Hispanic & Latino American Affairs Commission, League of Women Voters of Kansas, Kansas

Association of School Boards, League of Kansas Municipalities, Unified Government of Wyandotte County, El Centro, Inc., Kansas Families United for Public Education, the Family Conservancy, Sunflower Community Action, Kansas Association for the Medically Underserved, Olathe School District, Methodist Women, and the Kansas Catholic Conference; two immigration lawyers; and several individuals.

The House Committee amended the bill to include penalties for employers who hire illegal immigrants and the requirement for employees to complete I-9 forms.

The House Committee of the Whole amended the bill by adding the penalties for employing an illegal alien and made other technical corrections.

The fiscal note on the original version of the bill indicates that prohibiting public benefits to illegal aliens would result in a budgetary savings. A precise and complete fiscal effect would require detailed information about the circumstances of those affected individuals and what benefits they receive, which is unknown. The Board of Regents states that HB 2367 would cause some students now eligible for lower in-state tuition rates to become ineligible, therefore reducing the level of tuition payments. Assuming 170 students would be affected, the loss of tuition revenue would be approximately \$416,500. The Department of Labor reports that the passage of HB 2367 would not require additional resources. The Kansas Department of Health and Environment believes its public health programs would be exempt under the provisions of the original bill. The Kansas Health Policy Authority cites administrative and coordinating complications that could have fiscal implications.