

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 329**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 329 would create the Kansas Illegal Alien Reform Act. The major provisions of the Act are as follows:

Federal I-9 Forms

- All employers would be required to follow the federal laws governing the completion and retention of the U. S. Department of Homeland Security I-9 Form for each newly hired employee.
- The Kansas Department of Labor would be required to make the form available to all employers at their request.
- No action relating in any way to the employment of an unauthorized alien could be brought by any person, city, county or state official against any employer who complies with the provisions of the federal law or participates in E-Verify or utilizes the Social Security Number Verification Service (SSNVS).

E-Verification

- On and after July 1, 2009, all state, county, and municipal employment would be required to enroll and actively participate in E-Verify Program for verification of employment status of all new employment commencing after July 1, 2009.

*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>

- On and after July 1, 2009, the Kansas Department of Labor would be required to enter into a memorandum of understanding with the United States Citizenship and Immigration Service to become an E-Verify Designated Agent for all employers in the State of Kansas.
 - The Department would be required to use E-Verify to verify the employment status of all employees hired by employers on and after July 1, 2011, in the State of Kansas.
 - An employer would not be mandated to use the services of the Department to verify employment eligibility; however, if the employer does not use the Department, then the employer would be required to enroll in and use the E-verify Program on and after July 1, 2011.

Criminal or Civil Crimes

Enforcement Provisions

- It would be unlawful for an employer to knowingly hire, recruit, refer for a fee for employment in the State, or continue to employ an unauthorized alien. This would be enforceable by the State of Kansas courts. The employer may demand a trial by jury; and if the determination is questioned by the employer or employee, the court proceedings against the employer are stayed until a final status determination is made by the federal government or federal courts.
- Any individual could file a written, signed complaint with the Attorney General who believes this action has occurred by an employer. The Attorney General would be required to review and could refer the complaint to the appropriate local law enforcement for investigation.

- A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity or race would be deemed invalid.
 - The investigation would be required to include verification of the work authorization with the federal government.
 - If the employer or employee whose status is in question, challenge a status determination by the federal government, the investigation could not proceed until a final status determination is made by the federal government or federal courts.
- The penalties for violation of this provision would be as follows:
 - First violation: order the employer to terminate the employment of all unauthorized aliens; order the employer to be subject to a three-year probationary period; order the employer to file a signed sworn affidavit with the Attorney General within three business days after the order is issued that the employer will not knowingly employ an unauthorized alien or order the employer to attend employment verification and discrimination training provided by the Kansas Department of Labor.
 - Second violation: order the employer to terminate the employment of all unauthorized aliens; may find the employer in violation of a court order and issue fines in accordance with Kansas law; order the employer to enroll and participate in E-Verify or direct the Attorney General to notify the Department of Homeland Security and the United States Attorney for the District of Kansas of such court order.

Exploitation of an Illegal Alien

- Exploitation of an illegal alien would be knowingly employing an illegal alien in violation of Kansas law and subjecting them to working conditions in violation of the federal minimum wage or maximum hours law. Violation of this would be a severity level 8 nonperson felony.

Misclassification of an Employee as an Independent Contractor

- Missclassifying an employee as an independent contractor would be knowingly and intentionally misclassifying an employee as an independent contractor and a first violation would be a class A misdemeanor; second or subsequent violation would be a level 8 nonperson felony.
- The provisions of K.S.A. 79-3228, withholding tax from wages; would not apply to misclassification of an employee who is an unauthorized alien.

Dealing in False Identification Documents

- Dealing in false identification documents would be reproducing, manufacturing, selling or offering for sale any identification document including any card, certificate credit or debit card, drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage or divorce certificates, or any documents required for completion of the federal employment eligibility verification form I-9. Vital records identity fraud would be a severity level 8, nonperson felony.

Release Prior to Trial

- The bill would require that a person's immigration status be verified with the federal government once that person is charged with a crime.

- The bill provides 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 for purposes of determining the grant of or issuance of an appearance bond.

Voting

- The bill would create the crime of inducing or aiding any person who is not a United States citizen to vote who is not a lawfully registered voter. The penalty for this crime would be that of a severity level 9, nonperson felony.
- The bill would create the crime of any person knowingly attempt to prevent or deter a legal citizen from voting or registering to vote based on fraudulent, deceptive or spurious grounds or information would constitute illegal voter suppression and would constitute a severity level 9, nonperson felony.
- The bill provides that unknowing and unintended violations of the voting without being qualified statute (K.S.A. 25-2416) would not apply to county election office personnel or election board workers performing official duties prescribed by law.

Department of Labor Employment Verification Training Center

- The bill establishes the Employment Verification Training Center to provide training session on state and federal laws regarding employment verification and prohibiting discrimination in the workplace; create and publish informative materials; develop and conduct cultural exchange and assimilation programs in conjunction with other state agencies relating to the education and employment of immigrants; and other federal and state employment laws.

City Prohibition

- A city would be prohibited from enacting any ordinance or resolution which creates any additional requirements or authorizes any penalty not articulated in the bill.

Public Benefits

- Under the bill, no unauthorized alien would be eligible to receive public benefits except those required to be offered by the federal government. No benefits would be provided until such alien's lawful presence in the United States is verified. Public benefit would mean any retirement, welfare, disability, housing, food assistance or unemployment benefits except that the term would not include licenses issued by the Department of Wildlife and Parks or licenses and identification cards issued by the Division of Motor Vehicles.
- The bill provides that the eligibility requirements would not apply to religious, educational, charitable or nonprofit organizations, organizations that provide services related to sexual or domestic violence, libraries, medical providers or utilities.

Background

The House Committee heard the following proponents and opponents on HB 2370, HB 2680, HB 2836, and HB 2921 (several provisions of these bills were placed in House Sub. for SB 329).

Proponents appearing in favor of the bill included: Representatives Ann Mah; Representative Tom Holland; Representative Brenda Landwehr; Representative Lance Kinzer; Representative Candy Ruff; Kris Koback, University of Kansas Medical Center; David Coleman, Iron Workers Local #10; Ed Hayes, Minute Men Civil Defense; Paul Degener,

Citizens for Immigration Reform; Terry Holdren, Kansas Farm Bureau; Joe Hudson, Carpenters District Council; Pat Moore, Teamsters Local 696; and several concerned citizens.

Testifying as neutral were David Dayvault, Kansas Independent Oil and Gas Association; and Cyndi Treaster, Director, Farm Bureau Worker Immigrant Refugee Health, Kansas Department of Health and Environment.

Written testimony was submitted by: Stephen Six, Kansas Attorney General; Kansas Restaurant and Hospitality Association; Kansas City Chapter of Kansas Builders Association; Kansas Livestock Association; Kansas Chamber; Topeka Chamber of Commerce; Overland Park Chamber of Commerce; Kansas Grain and Feed Association; Kansas Agribusiness Retailers Association; Kansas Cooperative Council; Northeast Johnson County Chamber of Commerce; Lenexa Chamber of Commerce; Home Builders Association; Kansas Contractors Association; Kansas Manufactured Housing; Kansas Pork Association; Associated General Contractors of Kansas; Kansas Dairy Association; Association of Building Contractors; and several concerned citizens.

Neutral written testimony was submitted by Ed Klumpp, Kansas Association of Chiefs of Police.

Opponents appearing in opposition of the bill included: Sister Theresa Bangert, Kansas Catholic Conference; Bill Gordon, Signature Landscape; Mira Mdivani, Immigration Attorney; Jeff Hammons, Mid-America Green Council; Michael Sharma-Crawford, Immigration Lawyer; Reg Robertson, concerned citizen; Carlos Gomez, Hispanic Chamber of Commerce of Greater Kansas City; Henry Sandate, Hispanic Chamber of Commerce Kansas City; Kara Lineweber, El Centro; Bishop Scott Jones, United Methodist Church; Teresa Molina, Sunflower Community Action; Armando Minjarez, Sunflower Community Action; Amy Blankenbiller, Kansas Chamber; Allie Devine, Kansas Livestock Association; Sandy Jacquot, League of Kansas Municipalities; Elias Garcia, LULAC; Stuart Little, Johnson County Government; Joe

Connor, Unified Government of Wyandotte County; Jim Darner, Suburban Lawn and Garden; Brent Metz, University of Kansas; Tim Witsman, Kansas Independent Business Coalition; Emily Haverkamp, Mdivani Law Firm; Don Whitten, concerned citizen; Paul Kane, Tulsa Home Builders Association; Bud Hentzen, Former County Commissioner, Sedgwick County; Curby Hughes, Mid America Green Industry Council; William Moroni, Society of Human Resource Management; Nestor Leon, Artistic Designs, Lawn and Landscape Co. Inc.; and Ted Smith, Motor Vehicles, Department of Revenue.

Written testimony was received from Kansas Building Industry Association; Wichita Area Builders Association; Association of General Contractors; Sisters of St. Joseph of Concordia, Kansas; Greg Baker Painting; Kansas Pork Association; Kansas Cooperative Council; Kansas Corporation Commission; Kansas Agribusiness Retailers Association; Kansas Grain and Feed Association; Home Builders Association of Greater Kansas City; Kansas Society of Human Resource Management; Hermes Company, Inc.; Associated General Contractors of Kansas Inc.; Sinclair Masonary and Pal's Glass; Kansas Families for Education; Social and Rehabilitation Services; and several concerned citizens.

The House Committee of the Whole deleted, then replaced, most of the bill's provisions.

The fiscal note was not available for the substitute bill at the time of passage.