

SESSION OF 2008

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR SENATE BILL NO. 458**

As Amended by Senate Committee of the Whole

**Brief\***

Sub. for SB 458 would create the Kansas Illegal Immigration Enforcement and Reform Act.

The bill would prohibit a business from knowingly hiring, recruiting, or referring for a fee for employment an unauthorized alien. The Attorney General or a county or district attorney could bring a civil suit for violation of these provisions. Under the bill, no suit would be allowed against a business if the business participates in the federal E-verify system and such system generates no concerns that the person is an unauthorized alien. If a business is determined to have violated the provisions of the bill, the district court would be required to issue a permanent injunction against further violations. The court would be authorized to order the business to appear before the court to show cause why such business should not be held in contempt. A business would have the affirmative defense if the business properly completed an I-9 form as required by federal law. Any action would have to be commenced within five years of the occurrence of the violation.

The bill would prohibit an unauthorized alien from receiving public benefits except those benefits that are required to be offered by federal law. A public benefit would not include reduced tuition or fees at a postsecondary educational institution provided under KSA 2007 Supp. 76-731a.

Under the bill, it would be unlawful for any labor union or employee organization to knowingly collect union dues from

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\*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>

unauthorized aliens. The Attorney General may initiate a civil action in district court; the civil fine for the first violation could be up to \$2,000, for the second violation, \$5,000, and, for the third and subsequent violations, \$10,000.

The bill sets out bail criteria for unauthorized aliens arrested for various infractions, as follows:

- An off-grid felony, no bail;
- A severity level 1, 2, or 3 person felony or a severity level 1 or 2 drug felony, bail would be at least \$250,000 cash or surety;
- All other felonies, bail would be at least \$50,000 cash or surety;
- A non-person felony, bail would be at least \$25,000 cash or surety; and
- A class A misdemeanor, bail would be at least \$10,000 cash or surety.

Bail would be required unless the court determines that the defendant is not likely to reoffend, and an intensive pre-trial supervision program is available.

The bill would create the crime of employment identity fraud which is willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment. The penalty would be a severity level 8, nonperson felony.

In addition, the bill would create the crime of coercing employment which is labor or services that are performed or provided by another person and that are obtained or maintained by the following: causing or threatening to cause serious physical injury; physically restraining or threatening to restrain a person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging or clothing; or

knowingly destroying, concealing, removing, confiscating, or possessing a passport or any other governmental identification of another person. The penalty for this crime would be a severity level 9, person felony if the victim is 18 years or older and a severity level 5 if the victim is less than 18 years of age.

The bill also would create the crime of peonage which is knowingly holding another person in a condition of involuntary servitude for a debt owed the person. The crime of peonage would be a severity level 8, person felony.

Under the bill, a person convicted of violating any criminal statute in the State of Kansas would not be eligible for a suspended sentence, conditional release, community service or probation if the person is in violation of federal immigration laws.

The bill would amend the trafficking statute to include in the definition of human trafficking knowingly transporting or assisting in the transportation of any person into the State of Kansas who is not lawfully present in the United States. Human trafficking also includes recruiting, harboring, transporting, or obtaining a person for services, through the use of force, fraud, or coercion for the purpose of subjecting a person to involuntary servitude. In addition, human trafficking would be defined as concealing, harboring, or shielding from detection an alien who enters or remains in the United States in violation of the law. Human trafficking would be a severity level 2, person felony. Human trafficking also would subject a person to forfeiture of assets. In addition to the penalty for human trafficking, the sentence may be increased by up to 10 years if the offense was part of an ongoing commercial or criminal organization and unauthorized aliens were transported in a manner that endangered their lives or such aliens presented a life-threatening health risk to the people of Kansas.

The bill would require a person convicted of aggravated human trafficking to register as a sex offender for the remainder of such person's life if the victim is less than 14 years of age.

In addition, the bill would allow forfeiture of assets of a person if that person is present in the United States in violation of federal immigration laws and commits a felony.

The bill would create the Illegal Immigration Enforcement Division within the Office of the Attorney General. The Enforcement Division would be responsible for the investigation and enforcement of criminal and civil prohibitions established under the Act. The Attorney General, concurrent with a county or district attorney, would be authorized to prosecute civil or criminal violations under the Act.

The bill would require unauthorized aliens, who are eligible for in-state tuition, to file an affidavit with the Illegal Immigration Enforcement Division of the Attorney General's Office stating that such alien has filed an application for citizenship. Current law requires the affidavit to be filed with a postsecondary educational institution.

## **Background**

Proponents appearing in favor of the bill included: Senator Peggy Palmer; Professor Kris Kobach; Texas State Representative Debbie Riddle; William Gudde, President, Gudde Farms, Inc.; representatives of Kansas Immigration Reform Effort, Minute Man Civil Defense Corporation, Citizens for Immigration Reform, the American Legion; and several concerned citizens.

Written testimony also was provided by the American Legion; Kansas Immigration Reform Effort; Center for Immigration Studies; NumbersUSA; Kansas Department of Social and Rehabilitation Services; and several concerned citizens.

Opponents testifying against the bill included: representatives of the Kansas Catholic Conference; the Kansas Chamber of Commerce; Kansas Livestock Association; Kansas Farm Bureau; Kansas Grain and Feed Association; Kansas

Agribusiness Retailers Association; Society of Human Resource Management, Washington D.C.; Wichita Independent Business Association; League of Kansas Municipalities; Unified Government and Public Health Department, Wyandotte County; Johnson County Government; Kansas Board of Regents; the Mdivani Law Firm; Kansas Independent Oil and Gas Association; Hermes Landscaping, Inc.; Catholic Diocese of Dodge City; and Central Plains Development.

Written testimony in opposition was provided by Artistic Lawn and Gardens; Missouri/Kansas American Immigration Lawyers Association; the Mdivani Law Firm; Kansas Corporation Commission; Kansas Cooperative Council; Greater Topeka Chamber of Commerce; Kansas Pork Association; Associated General Contractors of Kansas, Inc.; Kansas Building Industry Association; Wichita Area Builders Association; Tulsa Home Builders Association; Associated Builders and Contractors; Kansas Restaurant and Hospitality Association; Overland Park Chamber of Commerce; Kansas Manufactured Housing Association; Home Builders Association of Greater Kansas City; Sisters of Charity of Leavenworth; United Methodist Women of the Kansas East Conference; Dominican Sisters of Great Bend; Sisters of St. Joseph, Concordia; the Builders Association; Kansas City Chapter, AGC; Heritage Lawns, Ltd.; Artistic Designs; Grass-Roots, Inc., Olathe; Mid America Green Industry Council; Custom Lawn and Landscape, Inc., Olathe; Hispanic Chamber of Commerce of Greater Kansas City; Kansas Contractors Association, Inc.; State LULAC Organization; Kansas Association of School Boards; Kansas National Education Association; Kansas Society of Human Resource Management; Kansas Families for Education; El Centro, Inc.; and several concerned citizens.

Neutral written testimony was received from Cyndi Treaster, Director, Farmworker, Refugee and Immigrant Health, Kansas Department of Health and Environment; and Ed Klumpp, Kansas Association of Chiefs of Police.

The Senate Committee of the Whole made technical amendments to the bill. In addition, the Committee amended

the bill by creating new penalties for unauthorized aliens who violate the law, created the crime of peonage, and expanded the definitions of human trafficking. Finally, the amendments would penalize labor unions for deducting union dues from unauthorized aliens and requires filing of affidavits for unauthorized aliens who apply for in-state tuition to the Attorney General's Office.

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