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**Testimony of Kansas Attorney General Kris Kobach
Proponent for Senate Bill No. 254
Senate Federal & State Affairs Committee
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Chairman Thompson and Members of the Committee:

It is imperative that the Kansas Legislature enact S.B. 254 for two reasons: (1) it is good public policy that will save the State hundreds of millions of dollars; and (2) Kansas is currently violating two federal statutes, and S.B. 254 would fix that.

I. Public benefits for illegal aliens cost the state of Kansas \$603.1 million annually

Illegal aliens consume a vast amount of public benefits and services that are paid for by State and local governments. According to the Federation for American Immigration Reform's 2023 report, Kansas taxpayers paid \$603.1 million dollars net in that year. That is the cost of all public services provided, minus any taxes collected from the illegal aliens. Assuming that the estimated number of illegal aliens in Kansas is correct (104,000), then the cost per illegal alien in the state is \$4,308 annually. Or, stated differently, each Kansas household is paying \$509 annually to support the cost of illegal aliens. <https://www.fairus.org/sites/default/files/2023-03/kansas2023.pdf>.

Because our neighboring states of Nebraska, Missouri, and Oklahoma have already enacted laws like S.B. 254 prohibiting public benefits from flowing to illegal aliens, there is currently a strong incentive for illegal alien households to settle in Kansas, rather than those states.

II. Kansas is currently violating the federal law prohibiting states from providing such benefits to illegal aliens.

Federal law at 8 U.S.C. § 1621 prohibits states from providing public benefits to illegal aliens. In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), popularly known as the "Welfare Reform Act of 1996." In that act, Congress included numerous provisions designed to ensure that illegal aliens do not receive public benefits at the federal state or local level. Those provisions are found primarily in 8

U.S.C. § 1621. Specifically, Congress stated that an illegal alien “is not eligible for any State or local public benefit.” 8 U.S.C. § 1621(a). Public benefits are defined under federal law as “any grant, contract, loan, professional license, or commercial license ... any retirement, welfare health , disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.” 8 U.S.C. §1621(c)(1)(A)-(B). Exceptions are made for emergency medical services, emergency disaster relief, and immunizations. 8 U.S.C. § 1621(b).

When it passed the Welfare Reform Act of 1996, Congress expressly spelled out its objectives. 8 U.S.C. § 1601(2) states: “It continues to be the immigration policy of the United States that (a) aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (b) the availability of public benefits not constitute an incentive for immigration to the United States.” A few subsections later in the Code, Congress reiterated its purpose: “***It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.***” 8 U.S.C. 1601(6) (emphasis added). Congress was determined to remove the magnetic effect of public benefits in the illegal immigration crisis.

The effect of S.B. 254 is to ensure that Kansas complies with its obligations under federal law. It simply requires public officials to verify the legal status of those aliens who seek benefits. This can be accomplished easily and in a matter of minutes via telephone or internet using the Systematic Alien Verification for Entitlements (SAVE) program operated by the U.S. Department of Homeland Security.

S.B. 254 also serves to shield state officials from potential violations of federal law. When state officials look the other way, or decline to ascertain whether or not an alien who seeks benefits is lawfully present in the United States, they not only run the risk of violating 8 U.S.C. § 1621, they enable illegal aliens to remain in the country with impunity.

Because immigration is an area of law in which the federal government maintains preemptive authority, Congress was careful to expressly pave the way for states to verify the status of aliens seeking public benefits. Congress gave the states explicit authorization to do so in 8 U.S.C. § 1625: “A State or political subdivision of a State is authorized to require an applicant for State and local public benefits ... to provide proof of eligibility.”

III. Kansas is also currently violating the federal law prohibiting states from giving in-state tuition rates to illegal aliens.

For 21 years, Kansas has been violating federal law by offering in-state tuition to illegal aliens. S.B. 254 would repeal K.S.A. 76-731a, which was enacted by the Kansas Legislature and signed by Governor Sebelius in 2004. K.S.A. 76-731a clearly violates the provision of federal law found at 8 U.S.C. § 1623. In 1996, Congress passed a federal statute specifically prohibiting state governments from giving in-state tuition to illegal aliens. That provision was part of the

larger Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Congress declared that no state may give in-state tuition benefits to illegal aliens unless the state extends the same tuition benefits to out-of-state U.S. citizens. The specific text of 8 U.S.C. § 1623 is as follows:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

The intent of Congress in passing 8 U.S.C. § 1623 was unmistakable and unequivocal. The House Conference Report accompanying the bill explained Congress's intent clearly: "This section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." Conference Report 104-828, H.R. 2202 (Sept. 24, 1996)(emphasis added). Senator Alan Simpson, sponsor of the Senate version of the bill, summarized the provision simply: "Illegal aliens will no longer be eligible for reduced in-State college tuition." 142 Cong. Rec. S11713 (1996). K.S.A. 76-731a stands in violation of this federal statute.

It is important to understand that 8 U.S.C. § 1623 requires that all U.S. citizens—not just some U.S. citizens who have graduated from Kansas high schools, but all U.S. citizens, no matter how much time they have spent in Kansas—be given access to in-state tuition by any state that provides this benefit to illegal aliens. Some defenders of K.S.A. 76-731a have incorrectly claimed that it might pass muster under federal law if a few U.S. citizens were allowed to qualify for in-state tuition by meeting its criteria. Congress wrote the federal law the way it did for a reason: giving in-state tuition to illegal aliens was to be a choice that no state would want to make, sacrificing the ability to charge out-of-state tuition to any U.S. citizen.

When Congress passed 8 U.S.C. § 1623 nearly thirty years ago, members of Congress did not imagine that states like Kansas would either intentionally or ignorantly violate federal law. Consequently, no penalty provision was imposed on states that ignored the law. But that does not relive us of our obligations. We have all sworn to uphold the Constitution and laws of the United States and of Kansas. S.B. 254 would make good on that promise.