

**SENATE BILL No. 522**

By Committee on Assessment and Taxation

2-20

1 AN ACT concerning immigration; creating the crime of unlawful entry  
2 into this state; requiring notification of federal immigration authorities  
3 upon arrest for such offense; amending K.S.A. 2023 Supp. 60-2102 and  
4 repealing the existing section.

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

7 New Section 1. (a) Unlawful entry into this state is being physically  
8 present within the boundaries of this state while an alien.

9 (b) Unlawful entry into this state is a:

10 (1) Class A nonperson misdemeanor, except as provided in subsection  
11 (b)(2); and

12 (2) severity level 10, nonperson felony upon a second or subsequent  
13 conviction.

14 (c) (1) It shall be an affirmative defense to prosecution under this  
15 section that:

16 (A) The federal government has granted the defendant:

17 (i) Lawful presence in the United States; or

18 (ii) asylum under 8 U.S.C. § 1158;

19 (B) the defendant's conduct does not constitute a violation of 8 U.S.C.  
20 § 1325(a); or

21 (C) the defendant was approved for benefits under the federal  
22 deferred action for childhood arrivals program prior to July 16, 2021.

23 (2) It shall not be an affirmative defense to prosecution under this  
24 section that the defendant was approved for benefits under:

25 (A) The federal deferred action for parents of Americans and lawful  
26 permanent residents program; or

27 (B) any program not enacted by the congress of the United States that  
28 is a successor to or materially similar to the program described in  
29 subsection (c)(1)(C) or (c)(2)(A).

30 (d) As used in this section, "alien" means any person who is not a  
31 citizen or national of the United States.

32 (e) This section shall be a part of and supplemental to the Kansas  
33 criminal code.

34 New Sec. 2. Upon a determination that probable cause exists for the  
35 arrest of a person for a violation of section 1, and amendments thereto, the  
36 court shall issue an order directing the prosecutor to notify the United

1 States immigration and customs enforcement of the United States  
2 department of homeland security, or any successor federal agency, that  
3 such person has been arrested for a violation of section 1, and amendments  
4 thereto, and request a determination of such person's immigration status.

5 New Sec. 3. (a) Except as provided by subsection (d), a city or county  
6 official, employee or contractor shall be immune from liability for  
7 damages arising from a cause of action under state law resulting from an  
8 action taken by such official, employee or contractor to enforce section 1  
9 or 2, and amendments thereto, during the scope of such official's,  
10 employee's or contractor's duties.

11 (b) Subject to subsection (c) and except as provided by subsection  
12 (d), a city or county shall indemnify an official, employee or contractor of  
13 such city or county for damages arising from a cause of action under  
14 federal law resulting from an action taken by such official, employee or  
15 contractor to enforce section 1 or 2, and amendments thereto, during the  
16 scope of such official's, employee's or contractor's duties.

17 (c) Indemnification provided by a city or county pursuant to  
18 subsection (b) shall not exceed:

19 (1) \$100,000 to any one person or \$300,000 for any single occurrence  
20 in the case of personal injury or death; or

21 (2) \$10,000 for a single occurrence of property damage.

22 (d) Subsections (a) and (b) shall not apply if in any action brought  
23 under state or federal law it is determined that the city or county official,  
24 employee or contractor acted in bad faith, with gross negligence or  
25 recklessness.

26 (e) A city or county shall indemnify an official, employee or  
27 contractor of such city or county for reasonable attorney fees and court  
28 costs incurred in such official's, employee's or contractor's defense against  
29 a criminal prosecution for an action taken by such official, employee or  
30 contractor to enforce section 1, and amendments thereto, during the scope  
31 of such official's, employee's or contractor's duties.

32 (f) Nothing in this section shall be construed to:

33 (1) Waive any statutory limits on damages provided under state law;  
34 or

35 (2) waive, bar or otherwise affect any defense, immunity or  
36 jurisdictional bar available to a city or county official, employee or  
37 contractor.

38 New Sec. 4. (a) Except as provided by subsection (d), a state officer,  
39 whether elected or appointed, state employee or contractor shall be  
40 immune from liability for damages arising from a cause of action under  
41 state law resulting from an action taken by such state officer, employee or  
42 contractor to enforce section 1 or 2, and amendments thereto, during the  
43 scope of such state officer's, employee's or contractor's duties.

1 (b) Except as provided by subsection (d), the state shall indemnify a  
2 state officer, employee or contractor for damages arising from a cause of  
3 action under federal law resulting from an action taken by such state  
4 officer, employee or contractor to enforce section 1, and amendments  
5 thereto, during the scope of such official's, employee's or contractor's  
6 duties.

7 (c) Indemnification provided under subsection (b) shall not be subject  
8 to any monetary limits provided by state law.

9 (d) Subsections (a) and (b) shall not apply if in any action brought  
10 under state or federal law it is determined that the state officer, employee  
11 or contractor acted in bad faith, with gross negligence or recklessness.

12 (e) The state shall indemnify a state officer, employee or contractor  
13 for reasonable attorney fees and court costs incurred in such state officer's,  
14 employee's or contractor's defense against a criminal prosecution for an  
15 action taken by such state officer, employee or contractor to enforce  
16 section 1 or 2, and amendments thereto, during the scope of such state  
17 officer's, employee's or contractor's duties.

18 (f) Any state officer, employee or contractor who is entitled to  
19 indemnification under subsection (b) shall also be entitled to  
20 representation in any such action by the attorney general.

21 (g) Nothing in this section shall be construed to:

22 (1) Waive any statutory limits on damages provided under state law;  
23 or

24 (2) waive, bar or otherwise affect any defense, immunity or  
25 jurisdictional bar available to a state officer, employee or contractor.

26 Sec. 5. K.S.A. 2023 Supp. 60-2102 is hereby amended to read as  
27 follows: 60-2102. (a) *Appeal to court of appeals as matter of right*. Except  
28 for any order or final decision of a district magistrate judge who is not  
29 regularly admitted to practice law in Kansas, the appellate jurisdiction of  
30 the court of appeals may be invoked by appeal as a matter of right from:

31 (1) An order that discharges, vacates or modifies a provisional  
32 remedy.

33 (2) An order that grants, continues, modifies, refuses or dissolves an  
34 injunction, or an order that grants or refuses relief in the form of  
35 mandamus, quo warranto or habeas corpus.

36 (3) An order that appoints a receiver or refuses to wind up a  
37 receivership or to take steps to accomplish the purposes thereof, such as  
38 directing sales or other disposal of property, or an order involving the tax  
39 or revenue laws, the title to real estate, the constitution of this state or the  
40 constitution, laws or treaties of the United States.

41 (4) A final decision in any action, except in an action where a direct  
42 appeal to the supreme court is required by law. In any appeal or cross  
43 appeal from a final decision, any act or ruling from the beginning of the

1 proceedings shall be reviewable.

2 (b) *Appeal to supreme court as matter of right.* The appellate  
3 jurisdiction of the supreme court may be invoked by appeal as a matter of  
4 right from:

5 (1) A preliminary or final decision in which a statute of this state has  
6 been held unconstitutional as a violation of Article 6 of the constitution of  
7 the state of Kansas pursuant to K.S.A. 72-5633, and amendments thereto.  
8 Any appeal filed pursuant to this subsection (b)(1) shall be filed within 30  
9 days of the date the preliminary or final decision is filed.

10 (2) A final decision of the district court in any action challenging the  
11 constitutionality of or arising out of any provision of the Kansas expanded  
12 lottery act, any lottery gaming facility management contract or any  
13 racetrack gaming facility management contract entered into pursuant to the  
14 Kansas expanded lottery act.

15 (3) *A final decision of the district court in any action arising from an*  
16 *action taken by a city or county official, employee or contractor or a state*  
17 *officer, employee or contractor to enforce section 1 or 2, and amendments*  
18 *thereto.*

19 (c) *Other appeals.* When a district judge, or a district magistrate  
20 judge who is regularly admitted to practice law in Kansas, in making in a  
21 civil action an order not otherwise appealable under this section, is of the  
22 opinion that such order involves a controlling question of law as to which  
23 there is substantial ground for difference of opinion and that an immediate  
24 appeal from the order may materially advance the ultimate termination of  
25 the litigation, the judge shall so state in writing in such order. The court of  
26 appeals may thereupon, in its discretion, permit an appeal to be taken from  
27 such order, if application is made to it within 14 days after the entry of the  
28 order under such terms and conditions as the supreme court fixes by rule.  
29 Application for an appeal pursuant to this subsection shall not stay  
30 proceedings in the district court unless the judge of the district court or an  
31 appellate court or a judge thereof so orders.

32 Sec. 6. K.S.A. 2023 Supp. 60-2102 is hereby repealed.

33 Sec. 7. This act shall take effect and be in force from and after its  
34 publication in the statute book.