Session of 2025

SENATE BILL No. 254

By Committee on Federal and State Affairs

2-10

AN ACT concerning immigration; relating to state and local public benefits and eligibility thereof; prohibiting aliens who are unlawfully present in the United States from receiving any state or local public benefit in accordance with applicable federal law; requiring individuals 18 years of age and older who apply for any state or local public benefit to provide proof of being lawfully present; prohibiting the state or any county or local agency from providing any public benefit to any alien without first verifying that the alien is lawfully present by use of the existing systematic alien verification for entitlements program; requiring state and local agencies administering public benefits to cooperate with the United States department of homeland security in achieving verification of an alien's lawful presence; relating to release prior to criminal trial; requiring any person charged with a crime who is not a citizen or national of the United States to undergo verification of such person's immigration status; creating a rebuttable presumption that a person determined to be an alien who is unlawfully present is at risk of flight; amending K.S.A. 22-2802 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) No alien who is unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that are required to be offered by 8 U.S.C. § 1621(b).

(b) (1) In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an individual applicant who is 18 years of age or older shall provide proof that the individual applicant is:

(A) A citizen or a permanent resident of the United States; or

(B) an alien who is lawfully present in the United States.

(2) Such affirmative proof shall include documentary evidence recognized by the division of motor vehicles when processing an application for a driver's license, as established in K.S.A. 8-240, and amendments thereto, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

(c) (1) No state, county or local agency shall provide any public benefit to any alien without first verifying that the alien is lawfully present in the United States and a qualified alien.

(2) Such verification shall occur through the systematic alien verification for entitlements program, operated by the United States department of homeland security.

(d) State and local agencies administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of aliens' lawful presence in the United States in furtherance of this section.

(e) As used in this section:

(1) "Lawfully present in the United States" means the same as defined in 8 C.F.R. § 1.3.

(2) "Postsecondary educational institution" means the same as defined in K.S.A. 74-3201b, and amendments thereto.

(3) "Qualified alien" means the same as defined in 8 U.S.C. § 1641.

(4) (A) "State or local public benefit" means the same as defined in 8 U.S.C. § 1621, except as provided in subparagraphs (B) and (C).

(B) "State or local public benefit" does not include any license or identification card issued by the division of motor vehicles.

(C) "State and local public benefit" includes reduced tuition and fee amounts offered by postsecondary educational institutions to residents. No alien who is unlawfully present in the United States shall receive such reduced tuition or fee amounts under any circumstances. Any provision of K.S.A. 76-731a, and amendments thereto, that is contrary to the prohibitions of this section shall be void.

Sec. 2. K.S.A. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. *If the person charged with a crime is not a citizen or national of the United States, such person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). For the purposes of determining the grant of or issuance of an appearance bond, it shall be a rebuttable presumption that a person who has been determined to be an alien unlawfully present in the United States is at risk of flight.* If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged

victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate. The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed $15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the $15 per week.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug and alcohol abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to treatment for such drug or alcohol abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to subsection (3). Except as provided in subsection (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to subsection (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at $2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony committed prior to July 1, 2012, a drug severity level 5 felony committed on or after July 1, 2012, or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

(A) Is a resident of the state of Kansas;

(B) has a criminal history score category of G, H or I;

(C) has no prior history of failure to appear for any court appearances;

(D) has no detainer or hold from any other jurisdiction;

(E) has not been extradited from, and is not awaiting extradition to, another state; and

(F) has not been detained for an alleged violation of probation.

(6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

(7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; whether the defendant is lawfully present in the United States; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the

conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed $15 per week of such supervision. As a condition of sentencing under K.S.A. 21-6604, and amendments thereto, the court may impose the full amount of any such costs in addition to the $15 per week, including, but not limited to, costs for treatment and evaluation under subsection (2).

New Sec. 3. If any provision of this act is held to be unconstitutional under the constitution of the United States or the constitution of the state of Kansas, such provision shall be severed from the act, and the other provisions of this act shall remain valid and in effect.

Sec. 4. K.S.A. 22-2802 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its

publication in the statute book.