

HOUSE BILL No. 2163

By Representatives Dillmore, Burroughs, Crow, Faust-Goudeau, Flaherty, Grant, Henry, Holland, Kuether, Lane, Loganbill, Mah, McLachlan, Neighbor, Phelps, Rardin, Ruff, Swenson, Tietze, Treaster, Ward, Wetta and Williams

1-23

12 AN ACT concerning employment; relating to the employment of illegal
13 aliens; amending K.S.A. 21-4409 and K.S.A. 2006 Supp. 21-4503a and
14 repealing the existing sections.
15

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

17 New Section 1. As used in sections 1 through 5, and amendments
18 thereto:

19 (a) "Employer" means any person, including any partnership, firm,
20 subcontractor, vendor, corporation or association, or agent thereof, who
21 engages or utilizes the personal services of one or more individuals for a
22 salary or wage;

23 (b) "illegal alien" means any person not a citizen of the United States
24 who has entered the United States in violation of the federal immigration
25 and naturalization act or regulations issued thereunder, who has legally
26 entered but without the right to be employed in the country, or who has
27 legally entered subject to a time limit but has remained illegally after the
28 expiration of such time limit, except that the term "illegal alien" shall not
29 mean any person who currently has the legal right to remain in the United
30 States and to be employed in the United States even though such person
31 originally entered the United States in violation of the federal immigration
32 and naturalization act or regulations issued thereunder and is not a citizen
33 of the United States;

34 (c) "secretary" means the secretary of labor;

35 (d) "state agency" means any state office or officer, department,
36 board, commission, institution, bureau or any agency, division or unit
37 within any office, department, board, commission or other state authority
38 of this state or any person requesting a state appropriation;

39 (e) "state benefit" means any state-administered or subsidized tax
40 credit, tax abatement, tax exemption, loan or loan guarantee; and

41 (f) "unit of government" means any school board, city or county coun-
42 cil or commission of this state, including, but not limited to, any govern-
43 mental entity which is wholly or partially taxpayer funded or any entity

1 which is the beneficiary of any state benefit.

2 New Sec. 2. (a) A person or entity is considered to have complied
3 with a requirement of sections 1 through 5, and amendments thereto,
4 notwithstanding a technical or procedural failure to meet such require-
5 ment, if there was a good faith attempt to comply with the federal require-
6 ments found in title 8 of the United States code, section 1324a.

7 (b) A person or entity which establishes that it has complied in good
8 faith with respect to the hiring, recruiting or referral for employment of
9 an alien in the United States has established an affirmative defense under
10 sections 1 through 5, and amendments thereto.

11 New Sec. 3. (a) No state agency or unit of government shall award
12 a public works or purchase contract to a bidder, contractor or employer,
13 nor shall a bidder, contractor or employer be eligible to bid for or receive
14 a public works contract, who has, in the preceding five years: (1) Been
15 convicted of violating a law of this state or federal law respecting the
16 employment of illegal aliens, or (2) been a party to a state agency pro-
17 ceeding in this state in which a penalty or sanction was ordered, either
18 by hearing or final order, or through stipulation and agreement, for vio-
19 lation of a law of this state or federal law respecting the employment of
20 illegal aliens.

21 (b) Any employer found to be in violation of this section shall, in
22 addition to all available administrative penalties and sanctions, forfeit and
23 be liable for an amount equal to the total value of the state benefit such
24 employer has received or been the beneficiary of for the period of five
25 years leading up to the date of the finding of guilt, not to exceed the
26 federally prescribed civil penalty in title 8 of the United States code,
27 section 1324a.

28 New Sec. 4. The secretary of the department of labor shall be re-
29 sponsible for administering the provisions of sections 1 through 5, and
30 amendments thereto.

31 New Sec. 5. The provisions of the Kansas administrative procedure
32 act, K.S.A. 77-501 et seq., and amendments thereto, shall govern all pro-
33 ceedings initiated under sections 1 through 5, and amendments thereto.

34 Sec. 6. K.S.A. 21-4409 is hereby amended to read as follows: 21-
35 4409. (a) Knowingly employing an alien illegally within the territory of
36 the United States is the employment of such alien within the state of
37 Kansas by an employer who knows such person to be illegally within the
38 territory of the United States. The provisions of this section shall not apply
39 to aliens who have entered the United States illegally and thereafter are
40 permitted to remain within the United States, temporarily or perma-
41 nently, pursuant to federal law.

42 (b) Knowingly employing an alien illegally within the territory of the
43 United States is a class $\in A$ *nonperson* misdemeanor. *On the second or*

1 *subsequent conviction of a violation of this section, in addition to any*
2 *other sentence imposed, a person shall be fined \$10,000.*

3 (c) *As used in this section, "employment" shall include subcontractors'*
4 *employees if the employer of the subcontractor has knowledge that the*
5 *subcontractor is employing persons or subcontracting with persons who*
6 *are illegally within the territory of the United States.*

7 Sec. 7. K.S.A. 2006 Supp. 21-4503a is hereby amended to read as
8 follows: 21-4503a. (a) A person who has been convicted of a felony may,
9 in addition to the sentence authorized by law, be ordered to pay a fine
10 which shall be fixed by the court as follows:

11 (1) For any off-grid felony crime or any felony ranked in severity level
12 1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto,
13 a sum not exceeding \$500,000.

14 (2) For any felony ranked in severity levels 1 through 5 of the nondrug
15 grid as provided in K.S.A. 21-4704 and amendments thereto or in severity
16 levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amend-
17 ments thereto, a sum not exceeding \$300,000.

18 (3) For any felony ranked in severity levels 6 through 10 of the non-
19 drug grid as provided in K.S.A. 21-4704 and amendments thereto or in
20 severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amend-
21 ments thereto, a sum not exceeding \$100,000.

22 (b) *Except as otherwise provided in statute*, a person who has been
23 convicted of a misdemeanor, in addition to or instead of the imprisonment
24 authorized by law, may be sentenced to pay a fine which shall be fixed
25 by the court as follows:

26 (1) For a class A misdemeanor, a sum not exceeding \$2,500.

27 (2) For a class B misdemeanor, a sum not exceeding \$1,000.

28 (3) For a class C misdemeanor, a sum not exceeding \$500.

29 (4) For an unclassified misdemeanor, any sum authorized by the stat-
30 ute that defines the crime. If no penalty is provided in such law, the fine
31 shall not exceed the fine provided herein for a class C misdemeanor.

32 (c) As an alternative to any of the above fines, the fine imposed may
33 be fixed at any greater sum not exceeding double the pecuniary gain
34 derived from the crime by the offender.

35 (d) A person who has been convicted of a traffic infraction may be
36 sentenced to pay a fine which shall be fixed by the court, not exceeding
37 \$500.

38 (e) A person who has been convicted of a cigarette or tobacco in-
39 fraction shall be sentenced to pay a fine of \$25.

40 (f) The provisions of this section shall apply to crimes committed on
41 or after July 1, 1993.

42 Sec. 8. K.S.A. 21-4409 and K.S.A. 2006 Supp. 21-4503a are hereby
43 repealed.

1 Sec. 9. This act shall take effect and be in force from and after its
2 publication in the statute book.