

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2007

## HOUSE BILL No. 2367

By Representative Kinzer

2-2

12 AN ACT concerning public benefits and **employment; relating to** ali-  
13 ens unlawfully present in the United States; ~~imposing certain prohi-~~  
14 ~~bitions on receipt of public benefits~~; **amending K.S.A. 21-4409 and**  
15 **K.S.A. 2006 Supp. 21-4503a and repealing the existing sections**.  
16

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

18 **[New]** Section 1. (a) (1) No alien unlawfully present in the United  
19 States shall receive any state or local public benefit, except for state or  
20 local public benefits that are required to be offered by Title 8, Section  
21 1621(b), of the United States Code.

22 (2) “Public benefit” means: Any grant, contract, loan or license pro-  
23 vided by an agency of state or local government; or any retirement, wel-  
24 fare, health, disability, housing, postsecondary education, food assistance  
25 or unemployment benefit under which payments, assistance, credits or  
26 reduced rates or fees are provided.

27 (b) (1) In addition to providing proof of other eligibility require-  
28 ments, at the time of application for any state or local public benefit, an  
29 applicant who is 18 years of age or older shall provide affirmative proof  
30 that the applicant is a citizen or a permanent resident of the United States  
31 or is lawfully present in the United States. Affirmative proof shall include  
32 documentary evidence recognized by the department of revenue when  
33 processing an application for a driver’s license, as well as any document  
34 issued by the federal government that confirms an alien’s lawful presence  
35 in the United States.

36 (2) An applicant, who cannot provide the proof required under this  
37 section at the time of application, may alternatively sign an affidavit under  
38 oath, attesting to either United States citizenship ~~or classification by the~~  
39 ~~United States as an alien lawfully admitted for permanent residence~~ **law-**  
40 **ful presence in the United States as provided in 8 U.S.C.A. 1101 et**  
41 **seq.**, in order to receive temporary benefits or temporary identification  
42 document as provided in this section. The affidavit shall include the ap-  
43 plicant’s social security number and an explanation of the penalties under

1 state law for obtaining public assistance benefits fraudulently.

2 (3) An applicant who has provided the sworn affidavit required under  
3 this section is eligible to receive temporary public benefits as follows:

4 (A) For 90 days or until such time that it is determined that the  
5 applicant is not lawfully present in the United States, whichever is earlier;  
6 or

7 (B) indefinitely if the applicant provides a copy of a completed ap-  
8 plication for a birth certificate that is pending in Kansas or some other  
9 state.

10 An extension granted under this subsection shall terminate upon the  
11 applicant's receipt of a birth certificate or a determination that a birth  
12 certificate does not exist because the applicant is not a United States  
13 citizen.

14 (c) An applicant who is an alien shall not receive any state or local  
15 public benefit unless the alien's lawful presence in the United States is  
16 first verified by the federal government, pursuant to Title 8, Section  
17 1373(c) of the United States Code.

18 State and local agencies administering public benefits in this state shall  
19 cooperate with the United States department of homeland security in  
20 achieving verification of an alien's lawful presence in the United States.  
21 The system utilized may include the systematic alien verification for en-  
22 titlements program operated by the United States department of home-  
23 land security.

24 **[New] Sec. 2. (a) All employers shall verify the identity and**  
25 **employment eligibility of all persons hired by completing and re-**  
26 **taining pursuant to this section a federal form I-9 for each em-**  
27 **ployee. For purposes of this section, the term employee shall not**  
28 **include the following:**

29 (1) Any person hired before November 7, 1986, and has been  
30 continuously employed by the same employer;

31 (2) any person providing domestic services in a private house-  
32 hold that are sporadic, irregular or intermittent;

33 (3) any person providing services for the employer as an in-  
34 dependent contractor; and

35 (4) any person providing services for the employer, under a  
36 contract, subcontract or exchange entered into after November 6,  
37 1986.

38 (b) Employers shall, to the extent not inconsistent with federal  
39 laws and regulations:

40 (1) Ensure that each employee completes section 1 of the form  
41 I-9 when the employee starts work;

42 (2) review documents establishing each employee's identity  
43 and eligibility to work to ensure that they reasonably appear on

1 **their face:**

2 **(A) To be genuine; and**

3 **(B) to relate to the individual presenting the documents;**

4 **(3) complete section 2 of the form I-9;**

5 **(4) complete section 3 of the form I-9;**

6 **(5) retain the form I-9 for three years after the date the person**  
7 **began work or one year after the person's employment is termi-**  
8 **nated, whichever is later; and**

9 **(6) make the form I-9 available for inspection by state or fed-**  
10 **eral officials upon request with three days notice.**

11 **(c) The Kansas department of labor shall make the form I-9**  
12 **available to all employers.**

13 **(d) No action shall be brought by any person, city, county or**  
14 **state official against any employer who complies with the provi-**  
15 **sions of subsections (a) and (b) relating in any way to the employ-**  
16 **ment of an illegal alien.**

17 **(e) In the event that the form I-9 is amended or replaced after**  
18 **the enactment of this section, an employer shall be considered in**  
19 **compliance with the provisions of subsections (a) and (b) if it com-**  
20 **pletes and maintains the then current federal employment eligi-**  
21 **bility form consistent with all relevant federal laws and**  
22 **regulations.**

23 **[New] Sec. 3. As used in sections 3 through 7, and amend-**  
24 **ments thereto:**

25 **(a) "Employer" means any person, including any partnership,**  
26 **firm, subcontractor, vendor, corporation or association, or agent**  
27 **thereof, who engages or utilizes the personal services of one or**  
28 **more individuals for a salary or wage;**

29 **(b) "illegal alien" means any person not a citizen of the United**  
30 **States who has entered the United States in violation of the federal**  
31 **immigration and naturalization act or regulations issued there-**  
32 **under, who has legally entered but without the right to be em-**  
33 **ployed in the country, or who has legally entered subject to a time**  
34 **limit but has remained illegally after the expiration of such time**  
35 **limit, except that the term "illegal alien" shall not mean any person**  
36 **who currently has the legal right to remain in the United States**  
37 **and to be employed in the United States even though such person**  
38 **originally entered the United States in violation of the federal im-**  
39 **migration and naturalization act or regulations issued thereunder**  
40 **and is not a citizen of the United States;**

41 **(c) "secretary" means the secretary of labor;**

42 **(d) "state agency" means any state office or officer, depart-**  
43 **ment, board, commission, institution, bureau or any agency, divi-**

1 sion or unit within any office, department, board, commission or  
2 other state authority of this state or any person requesting a state  
3 appropriation;

4 (e) “state benefit” means any state-administered or subsidized  
5 tax credit, tax abatement, tax exemption, loan or loan guarantee;  
6 and

7 (f) “unit of government” means any school board, city or  
8 county council or commission of this state, including, but not lim-  
9 ited to, any governmental entity which is wholly or partially tax-  
10 payer funded or any entity which is the beneficiary of any state  
11 benefit.

12 [New] Sec. 4. (a) A person or entity is considered to have com-  
13 plied with a requirement of sections 1 through 5, and amendments  
14 thereto, notwithstanding a technical or procedural failure to meet  
15 such requirement, if there was a good faith attempt to comply with  
16 the federal requirements found in title 8 of the United States code,  
17 section 1324a.

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

23 [New] Sec. 5. (a) No state agency or unit of government shall  
24 award a public works or purchase contract to a bidder, contractor  
25 or employer, nor shall a bidder, contractor or employer be eligible  
26 to bid for or receive a public works contract, who has, in the pre-  
27 ceding five years: (1) Been convicted of violating a law of this state  
28 or federal law respecting the employment of illegal aliens, or (2)  
29 been a party to a state agency proceeding in this state in which a  
30 penalty or sanction was ordered, either by hearing or final order,  
31 or through stipulation and agreement, for violation of a law of this  
32 state or federal law respecting the employment of illegal aliens.

33 (b) Any employer found to be in violation of subsection (c) by  
34 attempting to bid on a contract or having been awarded a contract  
35 when ineligible shall, in addition to all available administrative  
36 penalties and sanctions, forfeit and be liable for an amount equal  
37 to the total value of the state benefit such employer has received  
38 or been the beneficiary of for the period of five years leading up  
39 to the date of the finding of guilt, not to exceed the federally pre-  
40 scribed civil penalty in title 8 of the United States code, section  
41 1324a.

42 [New] Sec. 6. The secretary of the department of labor shall  
43 be responsible for administering the provisions of sections 1

1 through 5, and amendments thereto.

2 [New] Sec. 7. The provisions of the Kansas administrative pro-  
3 cedure act, K.S.A. 77-501 et seq., and amendments thereto, shall  
4 govern all proceedings initiated under sections 1 through 5, and  
5 amendments thereto.

6 [Sec. 8. K.S.A. 21-4409 is hereby amended to read as follows:  
7 21-4409. (a) Knowingly employing an alien illegally within the ter-  
8 ritory of the United States is the employment of such alien within  
9 the state of Kansas by an employer who knows such person to be  
10 illegally within the territory of the United States. The provisions  
11 of this section shall not apply to aliens who have entered the United  
12 States illegally and thereafter are permitted to remain within the  
13 United States, temporarily or permanently, pursuant to federal  
14 law.

15 [(b) Knowingly employing an alien illegally within the territory  
16 of the United States is a class  $\in A$  nonperson misdemeanor. On the  
17 second or subsequent conviction of a violation of this section, in addition  
18 to any other sentence imposed, a person shall be fined \$10,000.

19 [(c) As used in this section, “employment” shall include subcontrac-  
20 tors’ employees if the employer of the subcontractor has knowledge that  
21 the subcontractor is employing persons or subcontracting with persons  
22 who are illegally within the territory of the United States.

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

27 [(1) For any off-grid felony crime or any felony ranked in se-  
28 verity level 1 of the drug grid as provided in K.S.A. 21-4705 and  
29 amendments thereto, a sum not exceeding \$500,000.

30 [(2) For any felony ranked in severity levels 1 through 5 of the  
31 nondrug grid as provided in K.S.A. 21-4704 and amendments  
32 thereto or in severity levels 2 or 3 of the drug grid as provided in  
33 K.S.A. 21-4705 and amendments thereto, a sum not exceeding  
34 \$300,000.

35 [(3) For any felony ranked in severity levels 6 through 10 of  
36 the nondrug grid as provided in K.S.A. 21-4704 and amendments  
37 thereto or in severity level 4 of the drug grid as provided in K.S.A.  
38 21-4705 and amendments thereto, a sum not exceeding \$100,000.

39 [(b) Except as otherwise provided in statute, a person who has been  
40 convicted of a misdemeanor, in addition to or instead of the im-  
41 prisonment authorized by law, may be sentenced to pay a fine  
42 which shall be fixed by the court as follows:

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

- 1     **[(2) For a class B misdemeanor, a sum not exceeding \$1,000.**  
2     **[(3) For a class C misdemeanor, a sum not exceeding \$500.**  
3     **[(4) For an unclassified misdemeanor, any sum authorized by**  
4     **the statute that defines the crime. If no penalty is provided in such**  
5     **law, the fine shall not exceed the fine provided herein for a class**  
6     **C misdemeanor.**  
7     **[(c) As an alternative to any of the above fines, the fine imposed**  
8     **may be fixed at any greater sum not exceeding double the pecu-**  
9     **niary gain derived from the crime by the offender.**  
10    **[(d) A person who has been convicted of a traffic infraction may**  
11    **be sentenced to pay a fine which shall be fixed by the court, not**  
12    **exceeding \$500.**  
13    **[(e) A person who has been convicted of a cigarette or tobacco**  
14    **infraction shall be sentenced to pay a fine of \$25.**  
15    **[(f) The provisions of this section shall apply to crimes com-**  
16    **mitted on or after July 1, 1993.**  
17    **[Sec. 10. K.S.A. 21-4409 and K.S.A. 2006 Supp. 21-4503a are**  
18    **hereby repealed.]**  
19    ~~Sec. 8. [11.]~~ This act shall take effect and be in force from and  
20    after its publication in the statute book.