

HOUSE BILL No. 2680

By Representatives Mah, Davis, Dillmore, Holland, Lukert, Pauls, Ruff,
Trimmer, Ward and Williams

1-25

10 AN ACT enacting the immigration accountability act; relating to em-
11 ployment; duties of the department of revenue; amending K.S.A. 2007
12 Supp. 79-3234, 79-32,120 and 79-32,138 and repealing the existing
13 sections.

14

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

16 New Section 1. As used in this act, unless the context otherwise
17 requires:

18 (a) “Agency” means any agency, department, board or commission of
19 the state or any municipality, as defined in K.S.A. 75-1117, and amend-
20 ments thereto, that issues a license for purposes of operating a business
21 in this state.

22 (b) “E-verify” means an electronic system as jointly administered by
23 the United States department of homeland security and the social security
24 administration or its successor program, pursuant to 8 U.S.C. 1324a,
25 which is used to verify the employment authorization of employees.

26 (c) “Employee” means any person who performs employment serv-
27 ices for an employer pursuant to an employment relationship between
28 the employee and employer.

29 (d) “Employer” means any individual or type of organization that
30 transacts business in this state, that has a license issued by an agency in
31 this state and that employs one or more individuals who perform em-
32 ployment services in this state. Employer includes the state, any munic-
33 ipality, as defined in K.S.A. 75-1117, and amendments thereto, and self-
34 employed persons.

35 (e) “Intentionally” means, with respect to a result or to conduct, that
36 a person’s objective is to cause that result or to engage in that conduct.

37 (f) “Knowingly employ an unauthorized alien” means the actions de-
38 scribed in 8 U.S.C. 1324a. This term shall be interpreted consistently
39 with 8 U.S.C. 1324a and any applicable federal rules and regulations.

40 (g) “License” means any agency license, permit, certificate, approval,
41 registration, charter or similar form of authorization that is required by
42 law and that is issued by any agency for the purposes of operating a
43 business in this state. License includes:

- 1 (1) Articles of incorporation pursuant to article 60 of chapter 17 of
2 the Kansas Statutes Annotated, and amendments thereto.
- 3 (2) A partnership pursuant to chapter 56a of the Kansas Statutes An-
4 notated, and amendments thereto.
- 5 (3) A limited partnership pursuant to article 1a of chapter 56 of the
6 Kansas Statutes Annotated, and amendments thereto.
- 7 (4) A limited liability company pursuant to article 76 of chapter 17 of
8 the Kansas Statutes Annotated, and amendments thereto.
- 9 (5) A foreign corporation, a foreign limited partnership or a foreign
10 limited liability company authorized to transact business in this state.
- 11 (6) A business trust pursuant to article 20 of chapter 17 of the Kansas
12 Statutes Annotated, and amendments thereto.
- 13 (7) Any business entity that registers with the secretary of state.
14 License does not include any professional license.
- 15 (h) "Unauthorized alien" means an alien who does not have the legal
16 right or authorization under federal law to work in the United States as
17 described in 8 U.S.C. 1324a(h)(3).
- 18 New Sec. 2. (a) On and after January 1, 2009, an employer shall not
19 intentionally employ an unauthorized alien or knowingly employ an unau-
20 thorized alien.
- 21 (b) On receipt of a complaint that an employer allegedly intentionally
22 employs an unauthorized alien or knowingly employs an unauthorized
23 alien, the attorney general or county attorney shall investigate whether
24 the employer has violated subsection (a). When investigating a complaint,
25 the attorney general or county attorney shall verify the work authorization
26 of the alleged unauthorized alien with the federal government pursuant
27 to 8 U.S.C. 1373(c). A state, county or local official shall not attempt to
28 independently make a final determination on whether an alien is author-
29 ized to work in the United States. An alien's immigration status or work
30 authorization status shall be verified with the federal government pur-
31 suant to 8 U.S.C. 1373(c). A person who knowingly files a false and friv-
32 olous complaint under this subsection is guilty of a class C, nonperson
33 misdemeanor.
- 34 (c) If, after an investigation, the attorney general or county attorney
35 determines that the complaint is not frivolous:
- 36 (1) The attorney general or county attorney shall notify the United
37 States immigration and customs enforcement of the unauthorized alien.
- 38 (2) The attorney general or county attorney shall notify the local law
39 enforcement agency of the unauthorized alien.
- 40 (3) The attorney general shall notify the appropriate county attorney
41 to bring an action pursuant to subsection (d) if the complaint was origi-
42 nally filed with the attorney general.
- 43 (d) An action for a violation of subsection (a) shall be brought against

1 the employer by the county attorney in the county where the unauthor-
2 ized alien employee is employed. A second violation of this section shall
3 be based only on an unauthorized alien who is employed by the employer
4 after an action has been brought for a violation of subsection (a).

5 (e) For any action in court under this section, the court shall expedite
6 the action, including assigning the hearing at the earliest practicable date.

7 (f) On a finding of a violation of subsection (a):

8 (1) For a first violation during a three-year period that is a knowing
9 violation of subsection (a), the court:

10 (A) Shall order the employer to terminate the employment of all
11 unauthorized aliens.

12 (B) Shall order the employer to be subject to a three-year probation-
13 ary period. During the probationary period the employer shall file quar-
14 terly reports with the county attorney of each new employee who is hired
15 by the employer at the specific location where the unauthorized alien
16 performed work.

17 (C) Shall order the employer to file a signed sworn affidavit with the
18 county attorney within three business days after the order is issued. The
19 affidavit shall state that the employer has terminated the employment of
20 all unauthorized aliens and that the employer will not intentionally or
21 knowingly employ an unauthorized alien. The court shall order the ap-
22 propriate agencies to suspend all licenses subject to this section that are
23 held by the employer if the employer fails to file a signed sworn affidavit
24 with the county attorney within three business days after the order is
25 issued. All licenses that are suspended under this section shall remain
26 suspended until the employer files a signed sworn affidavit with the
27 county attorney. Notwithstanding any other law, on filing of the affidavit
28 the suspended licenses shall be reinstated immediately by the appropriate
29 agencies for the purposes of this section, the licenses that are subject to
30 suspension under this section are all licenses that are held by the em-
31 ployer and that are necessary to operate the employer's business at the
32 employer's business location where the unauthorized alien performed
33 work. If a license is not necessary to operate the employer's business at
34 the specific location where the unauthorized alien performed work, but
35 a license is necessary to operate the employer's business in general, the
36 licenses that are subject to suspension under this section are all licenses
37 that are held by the employer at the employer's primary place of business.
38 On receipt of the court's order and notwithstanding any other law, the
39 appropriate agencies shall suspend the licenses according to the court's
40 order. The court shall send a copy of the court's order to the attorney
41 general and the attorney general shall maintain the copy pursuant to sub-
42 section (g).

43 (D) May order the appropriate agencies to suspend all licenses de-

1 scribed in paragraph (C) that are held by the employer for not to exceed
2 10 business days. The court shall base its decision to suspend under this
3 paragraph on any evidence or information submitted to it during the
4 action for a violation of this section and shall consider the following fac-
5 tors, if relevant:

- 6 (i) The number of unauthorized aliens employed by the employer.
- 7 (ii) Any prior misconduct by the employer.
- 8 (iii) The degree of harm resulting from the violation.
- 9 (iv) Whether the employer made good faith efforts to comply with
10 any applicable requirements.
- 11 (v) The duration of the violation.
- 12 (vi) The role of the directors, officers or principals of the employer
13 in the violation.
- 14 (vii) Any other factors the court deems appropriate.

15 (2) For a first violation during a five-year period that is an intentional
16 violation of subsection (a), the court shall:

- 17 (A) Order the employer to terminate the employment of all unau-
18 thorized aliens.
- 19 (B) Order the employer to be subject to a five-year probationary pe-
20 riod. During the probationary period the employer shall file quarterly
21 reports with the county attorney of each new employee who is hired by
22 the employer at the specific location where the unauthorized alien per-
23 formed work.
- 24 (C) Order the appropriate agencies to suspend all licenses, described
25 in paragraph (D) that are held by the employer for a minimum of 10 days.
26 The court shall base its decision on the length of the suspension under
27 this subdivision on any evidence or information submitted to it during
28 the action for a violation of this subsection and shall consider the following
29 factors, if relevant:

- 30 (i) The number of unauthorized aliens employed by the employer.
- 31 (ii) Any prior misconduct by the employer.
- 32 (iii) The degree of harm resulting from the violation.
- 33 (iv) Whether the employer made good faith efforts to comply with
34 any applicable requirements.
- 35 (v) The duration of the violation.
- 36 (vi) The role of the directors, officers or principals of the employer
37 in the violation.
- 38 (vii) Any other factors the court deems appropriate.

39 (D) Order the employer to file a signed sworn affidavit with the
40 county attorney. The affidavit shall state that the employer has terminated
41 the employment of all unauthorized aliens and that the employer will not
42 intentionally or knowingly employ an unauthorized alien. All licenses that
43 are suspended under this section shall remain suspended until the em-

1 ployer files a signed sworn affidavit with the county attorney. For the
2 purposes of this section, the licenses that are subject to suspension under
3 this section are all licenses that are held by the employer and that are
4 necessary to operate the employer's business at the employer's business
5 location where the unauthorized alien performed work. If a license is not
6 necessary to operate the employer's business at the specific location
7 where the unauthorized alien performed work, but a license is necessary
8 to operate the employer's business in general, the licenses that are subject
9 to suspension under this section are all licenses that are held by the em-
10 ployer at the employer's primary place of business. On receipt of the
11 court's order and notwithstanding any other law, the appropriate agencies
12 shall suspend the licenses according to the court's order. The court shall
13 send a copy of the court's order to the attorney general and the attorney
14 general shall maintain the copy pursuant to subsection (g).

15 (3) For a second violation of subsection (a) during the period of pro-
16 bation, the court shall order the appropriate agencies to permanently
17 revoke all licenses that are held by the employer and that are necessary
18 to operate the employer's business at the employer's business location
19 where the unauthorized alien performed work. If a license is not neces-
20 sary to operate the employer's business at the specific location where the
21 unauthorized alien performed work, but a license is necessary to operate
22 the employer's business in general, the court shall order the appropriate
23 agencies to permanently revoke all licenses that are held by the employer
24 at the employer's primary place of business. On receipt of the order and
25 notwithstanding any other law, the appropriate agencies shall immediately
26 revoke the licenses.

27 (g) The attorney general shall maintain copies of court orders that
28 are received pursuant to subsection (f) and shall maintain a database of
29 the employers who have a first violation of subsection (a) and make the
30 court orders available on the attorney general's website.

31 (h) On determining whether an employee is an unauthorized alien,
32 the court shall consider only the federal government's determination pur-
33 suant to 8 U.S.C. 1373(c). The federal government's determination cre-
34 ates a rebuttable presumption of the employee's lawful status. The court
35 may take judicial notice of the federal government's determination and
36 may request the federal government to provide automated or testimonial
37 verification pursuant to 8 U.S.C. 1373(c).

38 (i) For the purposes of this section, proof of verifying the employment
39 authorization of an employee through e-verify creates a rebuttable pre-
40 sumption that an employer did not intentionally employ an unauthorized
41 alien or knowingly employ an unauthorized alien.

42 (j) For the purposes of this section, an employer who establishes that
43 it has complied in good faith with the requirements of 8 U.S.C. 1324a(b)

1 establishes an affirmative defense that the employer did not intentionally
2 or knowingly employ an unauthorized alien.

3 New Sec. 3. This act shall not be construed to require an employer
4 to take any action that the employer believes in good faith would violate
5 federal or state law.

6 New Sec. 4. On and after January 1, 2009, every employer, after
7 hiring an employee, shall verify the employment eligibility of the em-
8 ployee through e-verify.

9 New Sec. 5. On or before October 1, 2008, the department of rev-
10 enue shall provide a notice to every employer that is required to withhold
11 tax pursuant to K.S.A. 79-3298 et seq., and amendments thereto. The
12 notice shall explain the requirements of this act, including the following:

13 (a) A new state law prohibits employers from intentionally employing
14 an unauthorized alien or knowingly employing an unauthorized alien.

15 (b) For a first violation of this new state law during a three-year pe-
16 riod that is a knowing violation, the court will order the appropriate li-
17 censing agencies to suspend all licenses held by the employer unless the
18 employer files a signed sworn affidavit with the county attorney within
19 three business days. The filed affidavit must state that the employer has
20 terminated the employment of all unauthorized aliens and that the em-
21 ployer will not intentionally or knowingly employ an unauthorized alien.
22 A license that is suspended will remain suspended until the employer files
23 a signed sworn affidavit with the county attorney. A copy of the court
24 order will be made available on the attorney general's website.

25 (c) For a first violation of this new state law during a five-year period
26 that is an intentional violation, the court will order the appropriate li-
27 censing agencies to suspend all licenses held by the employer for a min-
28 imum of 10 days. The employer must file a signed sworn affidavit with
29 the county attorney. The filed affidavit must state that the employer has
30 terminated the employment of all unauthorized aliens and that the em-
31 ployer will not intentionally or knowingly employ an unauthorized alien.
32 A license that is suspended will remain suspended until the employer files
33 a signed sworn affidavit with the county attorney. A copy of the court
34 order will be made available on the attorney general's website.

35 (d) For a second violation of this new state law, the court will order
36 the appropriate licensing agencies to permanently revoke all licenses that
37 are held by the employer.

38 (e) Proof of verifying the employment authorization of an employee
39 through e-verify will create a rebuttable presumption that an employer
40 did not violate the new state law.

41 (f) On and after January 1, 2009, every employer, after hiring an em-
42 ployee, is required to verify the employment eligibility of the employee
43 through e-verify.

- 1 (g) Instructions for the employer on how to enroll in e-verify.
- 2 New Sec. 6. (a) No payment or compensation or other remuneration,
3 including, but not limited, to wages, salaries, bonuses, benefits, in-kind
4 exchanges, expenses or any other economic benefit, paid to an unauthor-
5 ized alien employee, as defined in section 1, and amendments thereto,
6 may be claimed and allowed as a deductible business expense for state
7 income tax purposes. This section shall apply whether or not an Internal
8 Revenue Service form 1099 or form W-2 is issued in conjunction with
9 such payments, compensation or other remuneration.
- 10 (b) This section shall not apply to any business which is exempt from
11 compliance with federal employment verification procedures under fed-
12 eral law which makes the employment of unauthorized aliens unlawful.
- 13 (c) This section shall not apply to any individual hired by the taxpayer
14 prior to January 1, 2009.
- 15 (d) This section shall not apply to any taxpayer where the individual
16 being paid is not directly compensated or employed by such taxpayer.
- 17 New Sec. 7. (a) No state agency or municipality, as defined in K.S.A.
18 75-1117, and amendments thereto, shall award a public works or purchase
19 contract to a bidder, contractor or employer, nor shall a bidder, contractor
20 or employer be eligible to bid for or receive a public works contract, who
21 has, in the preceding five years: (1) Been found to have violated section
22 2, and amendments thereto; or (2) been a party to a state agency pro-
23 ceeding in this state in which a penalty or sanction was ordered, either
24 by hearing or final order, or through stipulation and agreement, for vio-
25 lating section 2, and amendments thereto.
- 26 (b) A person or entity is considered to have complied with a require-
27 ment of this section, notwithstanding a technical or procedural failure to
28 meet such requirement, if there was a good faith attempt to comply with
29 the federal requirements found in 8 U.S.C. 1324a.
- 30 (c) A person or entity which establishes that it has complied in good
31 faith with respect to the hiring, recruiting or referral for employment of
32 an alien in the United States has established an affirmative defense under
33 this section.
- 34 (d) Any employer found to be in violation of this section shall, in
35 addition to all available administrative penalties and sanctions, forfeit and
36 be liable for an amount equal to the total value of the state benefit such
37 employer has received or been the beneficiary of for the period of five
38 years leading up to the date of the finding of guilt, not to exceed the
39 federally prescribed civil penalty in 8 U.S.C. 1324a.
- 40 (e) The secretary of labor shall be responsible for administering the
41 provisions of this section.
- 42 (f) The provisions of the Kansas administrative procedure act, K.S.A.
43 77-501 et seq., and amendments thereto, shall govern all proceedings

1 initiated under this section.

2 (g) As used in this section:

3 (1) "State agency" means any state office or officer, department,
4 board, commission, institution, bureau or any agency, division or unit
5 within any office, department, board, commission or other state authority
6 of this state or any person requesting a state appropriation.

7 (2) "State benefit" means any state-administered or subsidized tax
8 credit, tax abatement, tax exemption, loan or loan guarantee.

9 (3) "Unit of government" means any municipality, as defined in
10 K.S.A. 75-1117, and amendments thereto, or any entity which is the ben-
11 eficiary of any state benefit.

12 New Sec. 8. As used in sections 8 through 19, and amendments
13 thereto:

14 (a) "Construction" means any constructing, altering reconstructing,
15 repairing, rehabilitating, refinishing, refurbishing, remodeling, remedi-
16 ating, renovating, custom fabricating, maintenance, landscaping, improv-
17 ing, wrecking, painting, decorating, demolishing and adding to or sub-
18 tracting from any building, structure, highway, roadway, street, bridge,
19 alley, sewer, ditch, sewage disposal plant, water works, parking facility,
20 railroad, excavation or other structure, project, development, real prop-
21 erty or improvement, or to do any part thereof, whether or not the per-
22 formance of the work herein described involves the addition to, or fab-
23 rication into, any structure, project, development, real property or
24 improvement herein described of any material or article of merchandise.
25 Construction shall also include moving construction related materials on
26 the job site or to or from the job site.

27 (b) "Contractor" means any sole proprietor, partnership, limited part-
28 nership, firm, corporation, limited liability company, association or other
29 business entity that registers with the secretary of state who engages in
30 construction. "Contractor" shall include a general contractor and a
31 subcontractor.

32 (c) "Department" means the department of labor.

33 (d) "Secretary" means the secretary of labor.

34 (e) "Employer" means any contractor that employs individuals
35 deemed employees under section 9, and amendments thereto. "Em-
36 ployer" shall not include the:

37 (1) State of Kansas or its officers, agencies or political subdivisions;
38 or

39 (2) federal government.

40 (f) "Entity" means any contractor for which an individual is perform-
41 ing services and is not classified as an employee under section 9, and
42 amendments thereto. "Entity" does not include the:

43 (1) State of Kansas or its officers, agencies or political subdivisions;

1 or

2 (2) federal government.

3 (g) “Interested party” means a person with an interest in compliance
4 with sections 8 through 19, and amendments thereto.

5 (h) “Performing services” means the performance of any
6 construction.

7 New Sec. 9. (a) For the purposes of sections 8 through 19, and
8 amendments thereto, an individual performing services for a contractor
9 is deemed to be an employee of the employer except as provided in
10 subsections (b) and (c).

11 (b) An individual performing services for a contractor is deemed to
12 be an employee of the contractor unless it is shown that the:

13 (1) Individual has been and will continue to be free from control or
14 direction over the performance of the service for the contractor, both
15 under the contract of service and in fact;

16 (2) service performed by the individual is outside the usual course of
17 services performed by the contractor; and

18 (3) individual is engaged in an independently established trade, oc-
19 cupation, profession or business; or

20 (4) individual is deemed a legitimate sole proprietor or partnership
21 under subsection (c).

22 (c) The sole proprietor or partnership performing services for a con-
23 tractor as a subcontractor is deemed legitimate if it is shown that:

24 (1) the sole proprietor or partnership is performing the service free
25 from the direction or control over the means and manner of providing
26 the service, subject only to the right of the contractor for whom the serv-
27 ice is provided to specify the desired result;

28 (2) the sole proprietor or partnership is not subject to cancellation or
29 destruction upon severance of the relationship with the contractor;

30 (3) the sole proprietor or partnership has a substantial investment of
31 capital in the sole proprietorship or partnership beyond ordinary tools
32 and equipment and a personal vehicle;

33 (4) the sole proprietor or partnership owns the capital goods and
34 gains the profits and bears the losses of the sole proprietorship or
35 partnership;

36 (5) the sole proprietor or partnership makes its services available to
37 the general public or the business community on a continuing basis;

38 (6) the sole proprietor or partnership includes services rendered on
39 a federal income tax schedule as an independent business or profession;

40 (7) the sole proprietor or partnership performs services for the con-
41 tractor under the sole proprietorship’s or partnership’s name;

42 (8) when the services being provided require a license or permit, the
43 sole proprietor or partnership obtains and pays for the license or permit

1 in the sole proprietorship's or partnership's name;
2 (9) the sole proprietor or partnership furnishes the tools and equip-
3 ment necessary to provide the service;
4 (10) if necessary, the sole proprietor or partnership hires its own em-
5 ployees without contractor approval, pays the employees without reim-
6 bursement from the contractor and reports the employees' income to the
7 internal revenue service;
8 (11) the contractor does not represent the sole proprietorship or part-
9 nership as an employee of the contractor to its customers; and
10 (12) the sole proprietor or partnership has the right to perform sim-
11 ilar services for others on whatever basis and whenever it chooses.
12 (d) Where a sole proprietor or partnership performing services for a
13 contractor as a subcontractor is deemed not legitimate under subsection
14 (c), the sole proprietorship or partnership shall be deemed an individual
15 for purposes of sections 8 through 19, and amendments thereto.
16 (e) Subcontractors or lower tiered contractors are subject to all pro-
17 visions of sections 8 through 19, and amendments thereto.
18 (f) A contractor shall not be liable under sections 8 through 19, and
19 amendments thereto, for any subcontractor's failure to properly classify
20 persons performing services as employees, nor shall a subcontractor be
21 liable for any lower tiered subcontractor's failure to properly classify per-
22 sons performing services as employees.
23 New Sec. 10. It is unlawful for an employer or entity not to designate
24 an individual as an employee under section 9, and amendments thereto,
25 unless the employer or entity satisfies the provisions of section 9, and
26 amendments thereto.
27 New Sec. 11. (a) Any interested party may file a complaint with the
28 department against an entity or employer covered under sections 8
29 through 19, and amendments thereto, if there is a reasonable belief that
30 the entity or employer is in violation of sections 8 through 19, and amend-
31 ments thereto. It shall be the duty of the department to enforce the
32 provisions of sections 8 through 19, and amendments thereto. The de-
33 partment shall have the power to conduct investigations in connection
34 with the administration and enforcement of sections 8 through 19, and
35 amendments thereto. Any investigator with the department shall be au-
36 thorized to visit and inspect, at all reasonable times, any places covered
37 by sections 8 through 19, and amendments thereto, and shall be author-
38 ized to inspect, at all reasonable times, documents related to the deter-
39 mination of whether an individual is an employee under section 9, and
40 amendments thereto. The secretary or the secretary's representative may
41 compel, by subpoena, the attendance and testimony of witnesses and the
42 production of books, payrolls, records, papers and other evidence in any
43 investigation and may administer oaths to witnesses.

1 (b) Whenever the department believes upon investigation that there
2 has been a violation of any of the provisions of sections 8 through 19, and
3 amendments thereto, or any authorized rules or regulations, the depart-
4 ment may:

5 (1) Issue and cause to be served on any party an order to cease and
6 desist from further violation;

7 (2) take affirmative or other action as deemed reasonable to eliminate
8 the effect of the violation;

9 (3) collect the amount of any wages, salary, employment benefits or
10 other compensation denied or lost to the individual; and

11 (4) assess any civil penalty pursuant to section 14, and amendments
12 thereto.

13 (c) The civil penalties assessed by the department as well as any other
14 relief requested by the department shall be recoverable in an action
15 brought by the attorney general.

16 New Sec. 12. Criminal violations of sections 8 through 19, and
17 amendments thereto, shall be prosecuted by the attorney general. The
18 department shall refer matters to the attorney general upon determining
19 that a criminal violation may have occurred. In all other proceedings, the
20 department shall be represented by the attorney general's office.

21 New Sec. 13. Whenever it appears that any employer or entity has
22 violated a valid order of the department issued under sections 8 through
23 19, and amendments thereto, the secretary may commence an action and
24 obtain from the court an order commanding the employer or entity to
25 obey the order of the department or be found guilty of contempt of court.

26 New Sec. 14. (a) An employer or entity that violates any of the pro-
27 visions of sections 8 through 19, and amendments thereto, or any au-
28 thorized rules and regulations upon a first violation shall be subject to a
29 civil penalty not to exceed \$1,500 for each. An employer or entity shall
30 be subject to a civil penalty not to exceed \$2,500 for the second or sub-
31 sequent violation within a five-year period. For purposes of this section,
32 each violation of sections 8 through 19, and amendments thereto, for each
33 person and for each day the violation continues shall constitute a separate
34 and distinct violation. In determining the amount of a penalty, the sec-
35 retary shall consider the appropriateness of the penalty to the employer
36 or entity charged, upon the determination of the gravity of the violations.
37 The amount of the penalty, when finally determined, may be recovered
38 in a civil action filed in any court by the secretary, or a person aggrieved
39 by a violation of sections 8 through 19, and amendments thereto, or any
40 authorized rules and regulations. In any civil action brought by an inter-
41 ested party pursuant to this section, the court shall award the interested
42 party 10% of the amount recovered. In such case, the remaining amount
43 recovered shall be credited to the employee classification fund.

1 (b) For any second or subsequent violation which is within five-years
2 of an earlier violation, the department shall add the employer or entity's
3 name to a list to be posted on the department's official website. Upon
4 such notice, the department shall notify the violating employer or entity.
5 No state contract shall be awarded to an employer or entity appearing on
6 the list until four years have elapsed from the date of the last violation.

7 (c) Any person who willfully violates any of the provisions of sections
8 8 through 19, and amendments thereto, or any authorized rules and reg-
9 ulations, or obstructs the secretary, or the secretary's representatives, or
10 any other person authorized to inspect places of employment under sec-
11 tions 8 through 19, and amendments thereto, shall be liable for civil pen-
12 alties up to double the amounts specified in subsection (a). Any person
13 who willfully violates any of the provisions of sections 8 through 19, and
14 amendments thereto, or any authorized rules and regulations, shall be
15 liable to the employee for punitive damages in an amount equal to the
16 penalties assessed in subsection (a). The penalties established pursuant
17 to this subsection shall be imposed in cases in which an employer or
18 entity's conduct is proven by a preponderance of the evidence to be
19 willful.

20 (d) An entity or employer that willfully violates any provision of sec-
21 tions 8 through 19, and amendments thereto, is guilty of a class C non-
22 person misdemeanor. An entity or employer that commits a second or
23 subsequent violation within a five-year period is guilty of a severity level
24 10, nonperson felony.

25 New Sec. 15. (a) All moneys received by the department pursuant
26 to sections 8 through 19, and amendments thereto, shall be remitted to
27 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
28 and amendments thereto. The state treasurer shall deposit the entire
29 amount of the remittance in the state treasury and credit it to the em-
30 ployee classification fund, which is hereby created.

31 (b) Subject to appropriations, all expenditures from the employee
32 classification fund shall be used by the department for administration,
33 investigation and other expenses incurred in carrying out its powers and
34 duties under sections 8 through 19, and amendments thereto.

35 (c) All expenditures from the employee classification fund shall be
36 made in accordance with appropriation acts upon warrants of the director
37 of accounts and reports issued pursuant to vouchers approved by the
38 secretary.

39 New Sec. 16. (a) It is unlawful for an employer or entity, or any agent
40 of an employer or entity, to retaliate through discharge or in any other
41 manner against any person for exercising any rights granted under sec-
42 tions 8 through 19, and amendments thereto. Such retaliation shall sub-
43 ject an employer or entity to civil penalties pursuant to section 14, and

1 amendments thereto, or a private cause of action, or both.

2 (b) It is unlawful for an employer or entity to retaliate against a person
3 for:

4 (1) Making a complaint to an employer or entity, to a co-worker, to
5 a community organization, before a public hearing, or to a state or federal
6 agency that rights guaranteed under sections 8 through 19, and amend-
7 ments thereto, have been violated;

8 (2) causing to be instituted any proceeding under or related to sec-
9 tions 8 through 19, and amendments thereto; or

10 (3) testifying or preparing to testify in an investigation or proceeding
11 under sections 8 through 19, and amendments thereto.

12 New Sec. 17. (a) An interested party or person aggrieved by a vio-
13 lation of sections 8 through 19, and amendments thereto, or any author-
14 ized rules and regulations, by an employer or entity may file suit in court,
15 in the county where the alleged offense occurred or where any person
16 who is party to the action resides, without regard to exhaustion of any
17 alternative administrative remedies provided in sections 8 through 19,
18 and amendments thereto. Actions may be brought by one or more persons
19 for and on behalf of themselves and other persons similarly situated. A
20 person whose rights have been violated under sections 8 through 19, and
21 amendments thereto, by an employer or entity is entitled to collect:

22 (1) The amount of any wages, salary, employment benefits or other
23 compensation denied or lost to the person by reason of the violation, plus
24 an equal amount in liquidated damages;

25 (2) compensatory damages and an amount up to \$500 for each vio-
26 lation of sections 8 through 19, and amendments thereto, or any author-
27 ized rules and regulations;

28 (3) in the case of unlawful retaliation, all legal or equitable relief as
29 may be appropriate; and

30 (4) attorney's fees and costs.

31 (b) The right of an interested party or aggrieved person to bring an
32 action under this section terminates upon the passing of three years from
33 the final date of performing services to the employer or entity. This lim-
34 itations period is tolled if an employer or entity has deterred a person's
35 exercise of rights under sections 8 through 19, and amendments thereto.

36 New Sec. 18. (a) The department may adopt rules and regulations
37 to implement and administer sections 8 through 19, and amendments
38 thereto.

39 (b) Any finding made pursuant to sections 8 through 19, and amend-
40 ments thereto, is for the purpose of enforcing sections 8 through 19, and
41 amendments thereto, and may not be admissible or binding against a
42 party in any other proceeding.

43 (c) The provisions of the Kansas administrative procedure act, K.S.A.

1 77-501 et seq., and amendments thereto, shall govern all administrative
2 proceedings initiated under this section.

3 New Sec. 19. (a) There shall be no waiver of any provision of sec-
4 tions 8 through 19, and amendments thereto.

5 (b) It is a class C nonperson misdemeanor for an employer to attempt
6 to induce any individual to waive any provision of sections 8 through 19,
7 and amendments thereto.

8 Sec. 20. K.S.A. 2007 Supp. 79-3234 is hereby amended to read as
9 follows: 79-3234. (a) All reports and returns required by this act shall be
10 preserved for three years and thereafter until the director orders them
11 to be destroyed.

12 (b) Except in accordance with proper judicial order, or as provided
13 in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,
14 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall
15 be unlawful for the secretary, the director, any deputy, agent, clerk or
16 other officer, employee or former employee of the department of revenue
17 or any other state officer or employee or former state officer or employee
18 to divulge, or to make known in any way, the amount of income or any
19 particulars set forth or disclosed in any report, return, federal return or
20 federal return information required under this act; and it shall be unlawful
21 for the secretary, the director, any deputy, agent, clerk or other officer
22 or employee engaged in the administration of this act to engage in the
23 business or profession of tax accounting or to accept employment, with
24 or without consideration, from any person, firm or corporation for the
25 purpose, directly or indirectly, of preparing tax returns or reports required
26 by the laws of the state of Kansas, by any other state or by the United
27 States government, or to accept any employment for the purpose of ad-
28 vising, preparing material or data, or the auditing of books or records to
29 be used in an effort to defeat or cancel any tax or part thereof that has
30 been assessed by the state of Kansas, any other state or by the United
31 States government.

32 (c) The secretary or the secretary's designee may: (1) Publish statis-
33 tics, so classified as to prevent the identification of particular reports or
34 returns and the items thereof;

35 (2) allow the inspection of returns by the attorney general or other
36 legal representatives of the state;

37 (3) provide the post auditor access to all income tax reports or returns
38 in accordance with and subject to the provisions of subsection (g) of
39 K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

40 (4) disclose taxpayer information from income tax returns to persons
41 or entities contracting with the secretary of revenue where the secretary
42 has determined disclosure of such information is essential for completion
43 of the contract and has taken appropriate steps to preserve confidentiality;

- 1 (5) disclose to the secretary of commerce specific taxpayer informa-
2 tion related to financial information previously submitted by the taxpayer
3 to the secretary of commerce concerning or relevant to any income tax
4 credits, for purposes of verification of such information or evaluating the
5 effectiveness of any tax credit program administered by the secretary of
6 commerce;
- 7 (6) disclose income tax returns to the state gaming agency to be used
8 solely for the purpose of determining qualifications of licensees of and
9 applicants for licensure in tribal gaming. Any information received by the
10 state gaming agency shall be confidential and shall not be disclosed except
11 to the executive director, employees of the state gaming agency and mem-
12 bers and employees of the tribal gaming commission;
- 13 (7) disclose the taxpayer's name, last known address and residency
14 status to the department of wildlife and parks to be used solely in its
15 license fraud investigations;
- 16 (8) disclose the name, residence address, employer or Kansas ad-
17 justed gross income of a taxpayer who may have a duty of support in a
18 title IV-D case to the secretary of the Kansas department of social and
19 rehabilitation services for use solely in administrative or judicial proceed-
20 ings to establish, modify or enforce such support obligation in a title IV-
21 D case. In addition to any other limits on use, such use shall be allowed
22 only where subject to a protective order which prohibits disclosure out-
23 side of the title IV-D proceeding. As used in this section, "title IV-D
24 case" means a case being administered pursuant to part D of title IV of
25 the federal social security act (42 U.S.C. §651 et seq.) and amendments
26 thereto. Any person receiving any information under the provisions of
27 this subsection shall be subject to the confidentiality provisions of sub-
28 section (b) and to the penalty provisions of subsection (e);
- 29 (9) permit the commissioner of internal revenue of the United States,
30 or the proper official of any state imposing an income tax, or the author-
31 ized representative of either, to inspect the income tax returns made
32 under this act and the secretary of revenue may make available or furnish
33 to the taxing officials of any other state or the commissioner of internal
34 revenue of the United States or other taxing officials of the federal gov-
35 ernment, or their authorized representatives, information contained in
36 income tax reports or returns or any audit thereof or the report of any
37 investigation made with respect thereto, filed pursuant to the income tax
38 laws, as the secretary may consider proper, but such information shall not
39 be used for any other purpose than that of the administration of tax laws
40 of such state, the state of Kansas or of the United States;
- 41 (10) communicate to the executive director of the Kansas lottery in-
42 formation as to whether a person, partnership or corporation is current
43 in the filing of all applicable tax returns and in the payment of all taxes,

1 interest and penalties to the state of Kansas, excluding items under formal
2 appeal, for the purpose of determining whether such person, partnership
3 or corporation is eligible to be selected as a lottery retailer;

4 (11) communicate to the executive director of the Kansas racing com-
5 mission as to whether a person, partnership or corporation has failed to
6 meet any tax obligation to the state of Kansas for the purpose of deter-
7 mining whether such person, partnership or corporation is eligible for a
8 facility owner license or facility manager license pursuant to the Kansas
9 parimutuel racing act;

10 (12) provide such information to the executive director of the Kansas
11 public employees retirement system for the purpose of determining that
12 certain individuals' reported compensation is in compliance with the Kan-
13 sas public employees retirement act at K.S.A. 74-4901 et seq., and amend-
14 ments thereto; and

15 (13) provide taxpayer information of persons suspected of violating
16 *sections 8 through 19 or* K.S.A. 2007 Supp. 44-766, and amendments
17 thereto, to the staff attorneys of the department of labor for the purpose
18 of determining compliance by any person with the provisions of *sections*
19 *8 through 19 or* K.S.A. 2007 Supp. 44-766, and amendments thereto,
20 which information shall be limited to withholding tax and payroll infor-
21 mation, the identity of any person that has been or is currently being
22 audited or investigated in connection with the administration and en-
23 forcement of the withholding and declaration of estimated tax act, K.S.A.
24 79-3294 et seq., as amended, and the results or status of such audit or
25 investigation.

26 (d) Any person receiving information under the provisions of subsec-
27 tion (c) shall be subject to the confidentiality provisions of subsection (b)
28 and to the penalty provisions of subsection (e).

29 (e) Any violation of subsection (b) or (c) is a class A nonperson mis-
30 demeanor and, if the offender is an officer or employee of the state, such
31 officer or employee shall be dismissed from office.

32 (f) Nothing in this section shall be construed to allow disclosure of
33 the amount of income or any particulars set forth or disclosed in any
34 report, return, federal return or federal return information, where such
35 disclosure is prohibited by the federal internal revenue code as in effect
36 on September 1, 1996, and amendments thereto, related federal internal
37 revenue rules or regulations, or other federal law.

38 Sec. 21. K.S.A. 2007 Supp. 79-32,120 is hereby amended to read as
39 follows: 79-32,120. (a) If federal taxable income of an individual is deter-
40 mined by itemizing deductions from such individual's federal adjusted
41 gross income, such individual may elect to deduct the Kansas itemized
42 deduction in lieu of the Kansas standard deduction. The Kansas itemized
43 deduction of an individual means the total amount of deductions from

1 federal adjusted gross income, other than federal deductions for personal
2 exemptions, as provided in the federal internal revenue code with the
3 modifications specified in this section. *No deduction shall be allowed for*
4 *any payment, compensation or other economic benefit disallowed by sec-*
5 *tion 6, and amendments thereto.*

6 (b) The total amount of deductions from federal adjusted gross in-
7 come shall be reduced by the total amount of income taxes imposed by
8 or paid to this state or any other taxing jurisdiction to the extent that the
9 same are deducted in determining the federal itemized deductions and
10 by the amount of all depreciation deductions claimed for any real or
11 tangible personal property upon which the deduction allowed by K.S.A.
12 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-
13 32,250, 79-32,255 or 79-32,256, and amendments thereto, is or has been
14 claimed.

15 Sec. 22. K.S.A. 2007 Supp. 79-32,138 is hereby amended to read as
16 follows: 79-32,138. (a) Kansas taxable income of a corporation taxable
17 under this act shall be the corporation's federal taxable income for the
18 taxable year with the modifications specified in this section.

19 (b) There shall be added to federal taxable income: (i) The same
20 modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and
21 amendments thereto, with respect to resident individuals.

22 (ii) The amount of all depreciation deductions claimed for any prop-
23 erty upon which the deduction allowed by K.S.A. 2007 Supp. 79-32,221,
24 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-
25 32,256, and amendments thereto, is claimed.

26 (iii) The amount of any charitable contribution deduction claimed for
27 any contribution or gift to or for the use of any racially segregated edu-
28 cational institution.

29 (iv) *The amount of the payments, compensation or other economic*
30 *benefit disallowed by section 6, and amendments thereto.*

31 (c) There shall be subtracted from federal taxable income: (i) The
32 same modifications as are set forth in subsection (c) of K.S.A. 79-32,117,
33 and amendments thereto, with respect to resident individuals.

34 (ii) The federal income tax liability for any taxable year commencing
35 prior to December 31, 1971, for which a Kansas return was filed after
36 reduction for all credits thereon, except credits for payments on estimates
37 of federal income tax, credits for gasoline and lubricating oil tax, and for
38 foreign tax credits if, on the Kansas income tax return for such prior year,
39 the federal income tax deduction was computed on the basis of the federal
40 income tax paid in such prior year, rather than as accrued. Notwithstand-
41 ing the foregoing, the deduction for federal income tax liability for any
42 year shall not exceed that portion of the total federal income tax liability
43 for such year which bears the same ratio to the total federal income tax

1 liability for such year as the Kansas taxable income, as computed before
2 any deductions for federal income taxes and after application of subsec-
3 tions (d) and (e) of this section as existing for such year, bears to the
4 federal taxable income for the same year.

5 (iii) An amount for the amortization deduction allowed pursuant to
6 K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-
7 32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

8 (iv) For all taxable years commencing after December 31, 1987, the
9 amount included in federal taxable income pursuant to the provisions of
10 section 78 of the internal revenue code.

11 (v) For all taxable years commencing after December 31, 1987, 80%
12 of dividends from corporations incorporated outside of the United States
13 or the District of Columbia which are included in federal taxable income.

14 (d) If any corporation derives all of its income from sources within
15 Kansas in any taxable year commencing after December 31, 1979, its
16 Kansas taxable income shall be the sum resulting after application of
17 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas
18 taxable income in any such taxable year, after excluding any refunds of
19 federal income tax and before the deduction of federal income taxes pro-
20 vided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271
21 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund
22 of federal income tax as determined under paragraph (iv) of subsection
23 (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduc-
24 tion for federal income taxes as provided by subsection (c)(ii) shall be
25 such corporation's Kansas taxable income.

26 (e) A corporation may make an election with respect to its first taxable
27 year commencing after December 31, 1982, whereby no addition modi-
28 fications as provided for in subsection (b)(ii) of K.S.A. 79-32,138 and
29 subtraction modifications as provided for in subsection (c)(iii) of K.S.A.
30 79-32,138, as those subsections existed prior to their amendment by this
31 act, shall be required to be made for such taxable year.

32 Sec. 23. K.S.A. 2007 Supp. 79-3234, 79-32,120 and 79-32,138 are
33 hereby repealed.

34 Sec. 24. This act shall take effect and be in force from and after its
35 publication in the statute book.