

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 5:30 P.M. on March 12, 2008, in Room 519-S of the Capitol.

All members were present except Representative Peterson.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Others attending:

See attached list.

Chairman Siegfroid reopened the meeting at 5:30 by recognizing Representative Huebert. Representative Huebert made a motion to strike the words on page 5, line 8-9 "judiciary committee of the house of representatives" and replace with "legislative council" in House Substitute for SB 329. Seconded by Representative Brunk.

The Chair asked the Revisor of Statutes, Mike Heim, to brief the Committee on this motion. Mr. Heim stated that when you have a legislative committee making an administrative or judicial decision, you may have a separation of powers' issue. The other issue discussed by Mr. Heim concerned whether a state can require state officers and units of government to enforce federal law.

Representative Huebert changed his motion to strike the word "majority of judiciary committee of the house of representatives" and strike the word "either" from line 7, seconded by Representative Brunk.

After the Committee discussed the motion, Representative Dillmore entertained a substitute motion to strike New Section 3, paragraph (d), seconded by Representative Swenson. The motion failed.

Representative Loganbill offered a compromise substitute bill. She moved to take Representative Huebert's motion and strike the remainder of lines 9,10, 11, 12. The motion was seconded by Representative McCray-Miller. Motion failed.

The Chairman asked for a vote on the motion by Representative Huebert. By a vote of 17-3, the motion passed.

Representative Ruiz asked to strike New Section 6 in its entirety. The motion was seconded by Representative Faust-Goudeau. The motion passed.

Representative Powers asked, having voted on the prevailing side to add the employee classification amendment **House Substitute for SB 329**, to move to reconsider the motion. The motion was seconded by Representative Olson. The motion succeeded by a vote of 12 to 9.

The Chairman called for a vote on the Mah amendment, 9 yeas and 12 nays, the motion fails.

Representative Brunk asked that a bill be introduced reducing the number of city, school and community college primaries by increasing the number of filed candidates before a primary is called. Seconded by Huebert, without objection, the bill was accepted as a Committee bill.

The Chairman moved to replace the sanction section of **House Substitute for SB 329** with the business amendment. Representative Donohoe seconded the motion. (Attachment 1) The Committee discussed the amendment.

Representative Carlson offered the Siegfroid amendment as a substitute for the business amendment, seconded by Representative Bowers. By a voice vote, the motion failed. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 5:30 P.M. on March 12, 2008, in Room 519-S of the Capitol.

The Chairman called for a vote on the business amendment. The business amendment failed.

Representative Kinzer moved to adopt a balloon amendment to clarify E-Verify, seconded by Chairman Siegfried.

Jason Long, Revisor of Statutes, explained the balloons. New section 3 of the substitute bill which places the phase-in for E-Verify. He explained it would require the Department of Labor to indemnify any business entity for which the Department of Labor is an E-Verify designated agent against any lawsuit or claim that is brought against that business entity based on the an E-Verify check done by that department. There is an option for employers to opt out. Subsection J pertains to enrollment in E-Verify by a business entity and would be an affirmative defense that a business did no knowingly hire an illegal alien. A new section would be added to the bill stating that this act would not be construed to require an employer to take an action that the employer believes in good faith would violate state law. (Attachment 3)

With approval from the second, Representative Kinzer modified the amendment by striking Subsection (j) of section H.

After discussion among Committee members, the Chair called the question. The motion passed. The balloon amendment was adopted.

Representative Brown questioned whether small businesses could comply with the ability to file with E-Verify until 2010 when the Department of Labor offers the program. Representative Kinzer said that small businesses can comply with E-Verify by using third parties.

Moved by Representative Mah, seconded by Representative McCray-Miller, to strike (b) in New Section 5.

Representative Dillmore requested a substitute motion to replace the word "detained" with "arrested" in Section 5 paragraph (b) on page 9. The motion was seconded by Representative Loganbill. The motion carried.

Representative Mah requested a balloon amendment that clarifies the tuition part of New Section 7. Seconded by Representative Dillmore. The motion passed.

Representative Swenson moved to place the word "beginning" on line 2 in New Section 6, of **HB 2680**, into **House Substitute for SB 329**. Seconded by Representative Mah. Motion failed.

Representative Kinzer moved **House Substitute for SB 329** favorable as amended be passed. Seconded by Representative Morrison. The motion passed.

The meeting was adjourned. The next meeting will be March 13, 2008, at 1:30 p.m. in room 313-S.

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HOUSE Substitute for SENATE BILL NO. 329

By Committee on Federal and State Affairs

Proposed Amendment
Prepared by Revisor of Statutes Office
March 12, 2008

1 AN ACT enacting the Kansas illegal alien reform act;
2 amending K.S.A. 21-3830, 22-2802 and 25-2416 and
3 K.S.A. 2007 Supp. 8-240 and 8-1324 and repealing the
4 existing sections.

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

7 New Section 1. As used in this act:

8 (a) "E-verify" means the electronic verification
9 of work authorization program of the illegal
10 immigration reform and immigrant responsibility act of
11 1996, P.L. 104-208, division C, section 403(a); 8
12 U.S.C. 1324a, and operated by the United States
13 department of homeland security or a successor program
14 established by the federal government.

15 (b) "Business entity" means any person or group of
16 persons performing or engaging in any activity,
17 enterprise, profession or occupation for gain, benefit,
18 advantage or livelihood, whether for profit or
19 not-for-profit. "Business entity" shall not include an
20 individual employing casual domestic labor. "Business
21 entity" shall include, but not be limited to:

22 (1) Self-employed individuals, business entities
23 filing articles of incorporation pursuant to article 60
24 of chapter 17 of the Kansas Statutes Annotated, and
25 amendments thereto; a partnership pursuant to chapter
26 56a of the Kansas Statutes Annotated, and amendments
27 thereto; a limited partnership pursuant to article 1a
28 of chapter 56 of the Kansas Statutes Annotated, and
29 amendments thereto; a limited liability company
30 pursuant to article 76 of chapter 17 of the Kansas
31 Statutes Annotated, and amendments thereto; a foreign
32 corporation, a foreign limited partnership or a foreign
33 limited liability company authorized to transact
business in this state; a business trust pursuant to
article 20 of chapter 17 of the Kansas Statutes

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Attachment /

1 employed by the business entity;

2 (2) place the business entity on probation for a three
3 year period. During the probationary period, the business
4 entity shall file a quarterly report with the attorney
5 general concerning each new individual the business entity
6 hires at the specific business location where the
7 unauthorized alien worked; and

8 (3) order the business entity to file a sworn affidavit
9 signed by the business entity with the prosecuting attorney
10 within three business days after the order is issued under
11 paragraph (1). The affidavit must include a statement that
12 the business entity:

13 (A) Has terminated the employment of all unauthorized
14 aliens; and

15 (B) will not knowingly employ an unauthorized alien.

16 [~~If a business entity fails to file a sworn affidavit as
17 required under paragraph (3) with the prosecuting attorney
18 within the required time period, the court may order the
19 appropriate agencies to suspend all licenses that are held
20 by the business entity. All licenses suspended under this
21 subsection may remain suspended until the business entity
22 files a sworn affidavit as required under paragraph (3) with
23 the prosecuting attorney. If, upon a hearing, the court
24 finds a violation of any order issued under this subsection,
25 the court may find the business entity in contempt pursuant
26 to K.S.A. 20-1204a and amendments thereto.]~~

27 (d) On a finding, beyond a reasonable doubt, of the
28 second violation of section 2 or 3, and amendments thereto, or subsequent
29 by a business entity the court shall:

30 (1) Order the business entity to terminate the
31 employment of all unauthorized aliens employed by the
32 business entity;

33 (2) place the business entity on probation for a five
34 year period. During the probationary period, the business
35 entity shall file a quarterly report with the attorney
36 general concerning each new individual the business entity
37 hires at the specific business location where the
38 unauthorized alien worked;

39 (3) order the business entity to file a sworn affidavit
40 signed by the business entity with the prosecuting attorney
41 within three business days after the order is issued under
42 paragraph (1). The affidavit must include a statement that
43 the business entity:

(A) Has terminated the employment of all unauthorized
aliens; and

1 (B) will not knowingly employ an unauthorized alien;
2 and

3 ~~[(4)--order-the-suspension-of-all-licenses-that-are-held~~
4 ~~by-such-business-entity-for-a-period-of-not-less-than-10~~
5 ~~days-and-not-more-than-30-days.]~~

6 If, upon a hearing, the court finds a violation of any
7 order issued under this subsection, the court may find the
8 business entity in contempt pursuant to K.S.A. 20-1204a, and
9 amendments thereto.

10 ~~[(e)--On-a-finding-of-the-third-violation-of-section-2~~
11 ~~or-3,-and-amendments-thereto,-by-a-business-entity,-the~~
12 ~~court-shall-order-the-permanent-suspension-of-all-licenses~~
13 ~~that-are-held-by-such-business-entity-as-well-as-the~~
14 ~~revocation-of-the-business-entity's-registration-as-a~~
15 ~~corporation-in-the-state-of-Kansas,-if-applicable.]~~

16 (f) In enforcing the provisions of sections 2 and 3,
17 and amendments thereto, no state, county or local official
18 shall attempt to independently determine whether an
19 individual is an unauthorized alien or an alien not lawfully
20 present in the United States. Such determination shall only
21 be made by verifying the alien's immigration status with the
22 federal government, pursuant to 8 U.S.C. 1373(c).

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HOUSE Substitute for SENATE BILL NO. 329

By Committee on Federal and State Affairs

AN ACT enacting the Kansas illegal alien reform act; amending K.S.A. 21-3830, 22-2802 and 25-2416 and K.S.A. 2007 Supp. 8-240 and 8-1324 and repealing the existing sections.

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

New Section 1. As used in this act:

(a) "E-verify" means the electronic verification of work authorization program of the illegal immigration reform and immigrant responsibility act of 1996, P.L. 104-208, division C, section 403(a); 8 U.S.C. 1324a, and operated by the United States department of homeland security or a successor program established by the federal government.

(b) "Business entity" means any person or group of persons performing or engaging in any activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not-for-profit. "Business entity" shall not include an individual employing casual domestic labor. "Business entity" shall include, but not be limited to:

(1) Self-employed individuals, business entities filing articles of incorporation pursuant to article 60 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto; a partnership pursuant to chapter 56a of the Kansas Statutes Annotated, and amendments thereto; a limited partnership pursuant to article 1a of chapter 56 of the Kansas Statutes Annotated, and amendments thereto; a limited liability company pursuant

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States. The attorney general may negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

New Sec. 7. (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).

or as provided in K.S.A. 2007 Supp. 76-731a, and amendments thereto

(b) 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 affirmative proof that the individual applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States. 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) An individual applicant who cannot provide the proof required under this section at the time of application may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence, in order to receive temporary benefits or temporary identification document as provided in this section. The affidavit shall include the individual applicant's social security number and an explanation of the penalties under state law for obtaining

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HOUSE Substitute for SENATE BILL NO. 329

By Committee on Federal and State Affairs

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(b) "Business entity" means any person or group of persons performing or engaging in any activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not-for-profit. "Business entity" shall not include an individual employing casual domestic labor. "Business entity" shall include, but not be limited to:

(1) Self-employed individuals, business entities filing articles of incorporation pursuant to article 60 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto; a partnership pursuant to chapter 56a of the Kansas Statutes Annotated, and amendments thereto; a limited partnership

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Attachment 3

value of employment, labor or personal services exceeds \$10,000, the business entity shall provide documentation affirming its enrollment and participation in e-verify.

(c) On July 1, 2010, the department of labor shall enter into a memorandum of understanding with United States citizenship and immigration services to become an e-verify designated agent for all employers in the state of Kansas. The department of labor shall use e-verify to verify the employment authorization of all employees hired by employers in the state of Kansas. An employer may elect to not use the department of labor as its e-verify designated agent, and may do so in a form and manner proscribed by the department of labor. In the event an employer elects not to use the department of labor as its e-verify designated agent, then such employer must be enrolled in and actively participate in e-verify.

(d) An employer participating in e-verify shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in e-verify.

(e) Those state agencies, departments, boards, commissions and municipalities required to enroll in and actively participate in e-verify pursuant to subsection (a) shall report on such entity's use of e-verify, including the number of verification checks submitted, the number of tentative nonconfirmations received and the number of such tentative nonconfirmations that were resolved, to the state legislature on or before January 15, 2010.

(f) The provisions of this section shall expire on July 1, 2010.

New Sec. 4. (a) Any person who believes a business

(f) On and after July 1, 2010, the department of labor shall indemnify any business entity, for which the department of labor is an e-verify designated agent, against any and all claims, lawsuits, judgments and costs (including reasonable attorney fees and costs of defense) which are directly related to such business entity not hiring an individual based on the results of an e-verify employment authorization check conducted by the department of labor. In lieu of indemnifying the business entity, the department of labor may provide its own defense to such claims or lawsuits and assume liability for all costs associated with the action and for any damages awarded by the court.

and reletter the remaining subsections accordingly

by the federal government. The court may, and at the request of a party, shall request the federal government to provide, in automated, documentary or testimonial form, a new verification of the immigration status of the employee pursuant to 8 U.S.C. 1373(c). The most recent determination of the immigration status of an employee by the federal government shall create a rebuttable presumption as to the employee's immigration status. The determination of any person's employment authorization pursuant to 8 U.S.C. 1373(c) shall accommodate any contest of a tentative nonconfirmation by the federal government and no enforcement of sections 2 and 3 shall occur until the federal government issues a final nonconfirmation of employment authorization and any contest period provided by federal law has run.

The court may stay proceedings brought pursuant to this section until such time as the data has been finally determined.

(h) For the purposes of this section, a business entity that has complied in good faith with sections 2 and 3, and amendments thereto, through registration and participation in e-verify to confirm the employment authorization of any employee in question may not be found to have violated section 2 or section 3, and amendments thereto. It shall be a defense to a civil action brought for wrongful failure to hire an individual based on such individual's employment authorization status that the defendant business entity has complied in good faith with sections 2 and 3, and amendments thereto, through registration and participation in e-verify to confirm the employment authorization of the employee in question.

(i) A person who files a complaint with the attorney general or a prosecuting attorney under this section, knowing that such complaint is false or frivolous, is guilty of a class B misdemeanor.

(i) For purposes of this section, a business entity that has complied in good faith with the requirements of 8 U.S.C. 1324a(b) shall have an affirmative defense that the business entity did not knowingly hire, recruit or refer for a fee for employment in the state of Kansas or continue to employ an unauthorized alien.

(j) Enrollment and active participation in e-verify by any business entity that is not otherwise required to enroll and actively participate in e-verify under the provisions of section 3, and amendments thereto, shall be an affirmative defense that such business entity did not knowingly hire, recruit or refer for a fee for employment in the state of Kansas or continue to employ an unauthorized alien.

and reletter the remaining subsections accordingly

New Sec. 16. If any section, subsection, paragraph or provision of this act shall be held to be invalid by any court for any reason, it shall be presumed that this act would have been passed by the legislature without such invalid section, subsection, paragraph or provision, and such finding or construction shall not in any way affect the remainder of this act.

Sec. 17. K.S.A. 21-3830, 22-2802 and 25-2416 and K.S.A. 2007 Supp. 8-240 and 8-1324 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

New Sec. 16. This act shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.
and renumber the remaining sections accordingly