

Approved: 3-26-08
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 26, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Melissa Doeblin, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Rae Anne Davis, Work Force Development
Secretary Jim Garner, Department of Labor

Others attending:

See attached list.

Final Action:

SB 577 - Radon awareness law and radon certification program

A balloon with Senator Barnett's amendments was reviewed by staff for the committee . (Attachment 1)

A balloon with the Realtors amendment was provided by staff and reviewed by the committee. (Attachment 2)

Senator Barnett moved his amendment. Senator Reitz seconded the motion.

Senator Vratil moved a substitute amendment with the Realtors balloon. Senator Ostmeyer seconded the motion. Senator Brownlee offered a friendly amendment to be included to "be in bold font" on page 1c. Senator Vratil seconded the motion. The entire motion carried.

Senator Vratil moved to include in Senator Barnett proposed amendment, the language changes starting on page 3, line 32 and to the end of the bill. Senator Lynn seconded the motion. Senator Brownlee offered to be included in New Section 5 (b) the secretary has the authority to establish fees. Senator Vratil seconded the friendly amendment. The entire motion carried.

Senator Francisco moved to add the word "owns" on page 4 line 13. Senator Lynn seconded the motion. The motion carried.

The Revisor will implement the changes and the committee will review at a later date.

Kathie Sparks, Principal Analyst, Legislative Research Department provided the committee an overview on Immigration Issues, I-9, and E-verify. (Attachment 3)

Form I-9

The responsibility for employment verification arises from the federal Immigration Reform and Control Act of 1986. The Act requires each employer to have in their records a completed Form I-9, Employment Eligibility Verification, for each and every employee, including U.S. citizens hired after November 6, 1986. The form is also to be completed for:

- providers of domestic services that are sporadic, irregular, or intermittent in a private household
- providers of services for an employer as an independent contractor, i.e., one having an independent business, contracting to do work according to the contractor's means and methods, being subject to the employer's control only as to results, setting one's work hours, providing tools necessary to do the job and having authority to hire and fire

CONTINUATION SHEET

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- providers of services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for I-9 purposes; for example, a temporary employment agency.)

The Form I-9 is not filed with the U.S. government, the requirement is for the employers to maintain I-9 records in their own files for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. The form is published in English only, must be completed no later than the close of business on the first day of work, and the employee's signature holds him or her responsible for the accuracy of the information provided

According to the Immigration and Naturalization Services website, employers are not required to be document experts, and are held to a reasonableness standard. The website does not give a definition of "reasonableness" for this purpose.

E-Verify Program

The federal Department of Homeland Security (DHS) and the Social Security Administration (SSA) are jointly conducting the E-Verify program. The Program involves verification checks of the SSA and DHS databases, using an automated system to verify the employment authorization of all newly hired employees. The program has been in operation since November 1997 under the Basic Pilot Program and was extended in 2003 until November 2008, expanded to all 50 states and the District of Columbia, and was renamed the E-Verify Program in 2007. The program is voluntary for all employers except for the federal contractors which are required to participate by DHS and the states of Georgia, Colorado, Oklahoma, and Arizona, have enacted legislation that mandates the use of E-Verify, state agencies participate in the program in the states of Idaho, North Carolina, Pennsylvania, and Missouri. Weakness in the E-Verify Program are:

- Insufficient resources to expand the program - the agency does not currently have the resources to expand the program to all private and public employers throughout the country if it were to become mandatory.
- Inability to detect Identity Fraud - fraudulent use of identification belonging to others remains a significant impediment to the program
- Erroneous Non confirmation Results - employee have received erroneous tentative non-confirmation results from the program, and the employees, employers, and government have incurred costs in resolving these errors
- Noncompliance with program procedures - some employers may not fully understand the requirement of the program, while a few others may abuse the system

Federal Immigration Benefits

Undocumented immigrants under 8 USCS 1611 are not eligible for any federal benefit except:

- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition
- short-term, non cash, in-kind emergency disaster relief
- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development

Any non-citizen who does not meet the definition of qualified alien is considered a non-qualified alien for the purpose of determine eligibility for benefits. "Undocumented" or illegal immigrants fall into the non-qualified category, as do aliens considered to be non-immigrants such as students or foreign visitors, and others who are lawfully present in the United States, such as applicants for asylum. The Welfare Reform Act and legislation amending it address qualified aliens' eligibility for three categories of federal benefits:

- Food stamps
- SSI
- Other federal means-tested public benefits

All these benefits have other eligibility criteria that individual recipients, including qualified aliens, must meet. SOURCE: <http://ncinfo.iog.unc.edu/pubs/electronicversions/pg/immi.htm>

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MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 26, 2008 in Room 526-S of the Capitol.

Melissa Doeblin, Assistant Revisor of Statutes, provided the committee an overview of SB 458. (Attachment 4)

Rae Anne Davis, Director of Work Force Development, Department of Commerce, updated the committee on the Work Force needs of Kansas Employers. (Attachment 5) The state's overall unemployment rate continues to hover around four per cent, one quarter of all counties have an unemployment rate at or below three percent. This indicates a labor force shortage, all but two of the 26 counties are in wester half of the state. Labor shortages are a very real issue for Kansas businesses and communities, and the recruitment and retention of business to the state, the very first question asked is regarding the availability of a workforce for the jobs that would be created. The shortage of workers is an obvious concern and examples were provided about the existing workforce shortage in Kansas.

Jim Garner, Secretary Kansas Department of Labor, briefed the committee on the Kansas Labor Market. (Attachment 6) The information covered three areas:

Labor Force

The labor force is made up of all the people age 16 and over who are in the labor market. The Kansas labor force participation rate stood at approximately 71 % in 2007, compared to 66% percent nationwide, the unemployment rate in Kansas in December 2007 was 4.0%, compared to 4.8% nationwide. This indicates that Kansas employers may have difficulty recruiting employees and meeting further demands for workers.

Population

The state added 71,128 people for a 2.64% population gain from July 2000 to July 2006, according to U.S. Census Bureau estimates. The metropolitan areas of the state grew by 14,815 people or a 6.39% increase while the non-metropolitan counties fell by 33,687 or a 3.20% decline during the same time. While the metro area of the state have grown, the western and southeastern areas have experienced an overall population decline.

Immigration

The Kansas Department of Labor doesn't compile information on the number of immigrants, either legal or undocumented in the state or in the workforce. However, the methodology used by the Pew Hispanic Center is as statistically and academically rigorous as possible when attempting to estimate the number of undocumented workers in the U.S. According to a study by the Pew Hispanic Center there are approximately 40,000 to 70,000 undocumented migrants in the Kansas. Of these, the national average shows the majority were from Mexico (56%) and there are more adult males (49%) than adult females (35%), with children accounting for the rest. Nationwide, the Pew Center estimates that 4.9% of the nation's workforce is comprised of undocumented workers, with their employment concentrated more than average in farming, cleaning, construction and food preparation occupations. In Kansas, somewhere between 2 and 4% of the workforce may be comprised of undocumented migrants.

The meeting was adjourned at 11:56 am. The next scheduled meeting is February 27, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 2-26-08

NAME	REPRESENTING
BRIAN MOLINE	Sell
Guadalupe ^(Lupe) P.F. & Zarazua	State of Kansas
Kim Steves	KDHE
Tom Conley	KDHE
Rick Brunetti	KDHE
DAN MORGAN	Bridges Assn. / KC chapter, ABC
BILL SLANTZ	REALTOR / MITIGATION CONTRACTOR
Steve Albright	REALTOR
Brian Hanson	Kansas State University
Stan Ahlerich	Kansas, Inc
Jacquelyn Koehler	Kansas, Inc.
Dustin Moyer	Pinager, Smith
JEFF GLENNON	KS CHAMBER
Michele Schroeder	Dawson Court Relations
Austin Hayden	Hein Law Firm
Jay Kramer	CARTER GROUP
Lori Susch	Amca of KS
Spencer Duncan	capitol connection
Gary Holdren	AAR Professionals
Bruce Smith	KSU
Luke Bell	Ks Assoc. of REALTORS
Cindy Green	KC Assoc of REALTORS
Martha Jean Smith	KIMHA
Ryan J. Dahlby	Advanced Environmental Services Inc
Kevin Cyndie Treaster	KDHE

SENATE BILL No. 577

By Committee on Federal and State Affairs

2-7

9 AN ACT enacting the radon awareness law and the radon certification
10 law; amending K.S.A. 48-1625 and repealing the existing section.

11

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

13 New Section 1. (a) This section shall be known and may be cited as
14 the radon awareness law.

15 (b) As used in the radon awareness law:

16 (1) Words and phrases used in this section have the meanings as-
17 cribed thereto in section 3, and amendments thereto.

18 (2) "Residential real property" means any estate or interest in a man-
19 ufactured housing lot or a parcel of residential real property, improved
20 with not less than one nor more than four residential dwelling units.

21 (c) The secretary of the department of health and environment shall
22 administer the radon awareness law.

23 ~~(d) (1) From and after January 1, 2009, before entering into a con-~~
24 ~~tract for the sale of residential real property, the seller of such property~~
25 ~~shall provide to the buyer of any interest in such property the pamphlet~~
26 ~~entitled "Radon Testing Guidelines for Residential Real Property Trans-~~
27 ~~actions" or an equivalent pamphlet approved for use by the department~~
28 ~~which states that the property may present the potential for exposure to~~
29 ~~radon. In addition, the seller shall disclose any information known to the~~
30 ~~seller which shows elevated concentrations of radon in such property and~~
31 ~~shall provide the buyer with all available records and reports pertaining~~
32 ~~to elevated radon concentrations in such property. On a form provided~~
33 ~~by the department, the seller of residential real property shall acknowl-~~
34 ~~edge that the information required to be disclosed pursuant to this sub-~~
35 ~~section has been so disclosed.~~

36 ~~If the disclosures required by this subsection occurs after the buyer~~
37 ~~has made an offer to purchase the residential real property, the seller~~
38 ~~shall complete the required disclosures prior to accepting the buyer's~~
39 ~~offer and allow the buyer an opportunity to review the information and~~
40 ~~possibly amend the offer. Failure to comply with the requirements of this~~
41 ~~section shall make any contract to purchase residential real property~~
42 ~~voidable.~~

43 (2) The provisions of this subsection shall not apply to:

See attached Insert 1

Insert 1:

(d) (1) From and after January 1, 2009, after the execution of a contract for the sale of residential real property, the seller of such property shall provide to the buyer of any interest in such property the pamphlet entitled "Radon Testing Guidelines for Residential Real Property Transactions" or an equivalent pamphlet approved for use by the department which states that the property may present the potential for exposure to radon. There shall be contained in each contract for the sale of residential real estate the following statement:

"The buyer of any interest in residential real property is notified that the property may present exposure to dangerous concentrations of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires sellers of residential real property to disclose any information known to the seller that shows elevated concentrations of radon in such property. The Kansas Department of Health and Environment strongly recommends that buyers of residential real property have an indoor radon test performed prior to purchasing or taking occupancy of such property. If elevated concentrations of radon are found in such property, the Kansas Department of Health and Environment strongly recommends that the radon concentrations in such property be mitigated. Elevated radon concentrations can be reduced easily by a certified radon mitigation technician."

In addition, the seller shall disclose any information known to the seller which shows elevated concentrations of radon in residential real property and shall provide the buyer with all available records and reports pertaining to elevated radon concentrations in such property. On a form provided by the department, the seller and buyer of residential real property shall acknowledge that the information required to be disclosed pursuant to this subsection has been so disclosed.

1 (A) Transfers pursuant to court order including, but not limited to,
2 transfers ordered by a probate court in administration of an estate, trans-
3 fers between spouses resulting from a judgment of dissolution of marriage
4 or legal separation, transfers pursuant to an order of possession, transfers
5 by a trustee in bankruptcy, transfers by eminent domain or transfers re-
6 sulting from a decree for specific performance;

7 (B) transfers from a mortgagor to a mortgagee by deed in lieu of
8 foreclosure or consent judgment, transfer by judicial deed issued pursu-
9 ant to a foreclosure sale to the successful bidder or the assignee of a
10 certificate of sale, transfer by a collateral assignment of a beneficial in-
11 terest of a land trust or transfer by a mortgagee or a successor in interest
12 to the mortgagee's secured position or a beneficiary under a deed in trust
13 who has acquired the real property by deed in lieu of foreclosure, consent
14 judgment or judicial deed issued pursuant to a foreclosure sale;

15 (C) transfers by a fiduciary in the course of the administration of a
16 decedent's estate, guardianship, conservatorship or trust;

17 (D) transfers from one co-owner to one or more other co-owners;

18 (E) transfers pursuant to estate or intestate succession;

19 (F) transfers made to a spouse, or to a person or persons in the lineal
20 line of consanguinity of one or more of the sellers;

21 (G) transfers from an entity that has taken title to residential real
22 property from a seller for the purpose of assisting in the relocation of the
23 seller, so long as the entity makes available to all prospective buyers a
24 copy of the disclosure form furnished to the entity by the seller; or

25 (H) transfers of an unimproved lot or parcel of residential real
26 property.

27 (e) (1) From and after July 1, 2011, ~~before~~ entering into a contract
28 for the sale of residential real property, the radon level of such property
29 shall be determined either by:

after

30 ~~(A) Radon measurements performed on such property by the seller~~
31 ~~using radon measurement kits approved by the secretary. Radon meas-~~
32 ~~urements performed pursuant to this paragraph shall be performed in~~
33 ~~compliance with standards prescribed in rules and regulations adopted~~
34 ~~by the secretary;~~

(A)
(B)

35 ~~(B)~~ a radon measurement performed on such property by a certified
36 radon measurement technician; or

37 ~~(C)~~ a written acceptance by the buyer of radon measurements on
38 such property disclosed by the seller of the property; ~~in compliance with~~
39 ~~subsection (d)(1).~~

Such measurements shall have been performed within two years of the date on which the contract for sale was entered and shall have been conducted by a certified radon measurement technician.

40 (2) If the radon measurement is not performed on any residential
41 real property prior to the buyer making an offer on such property, the
42 requirement to measure the radon level of such property shall continue
43 as allowed under subsection (e)(1), but the buyer may amend or withdraw

1 the offer without penalty therefor.

2 (3) The provisions of this subsection shall not apply to transfers spec-
3 ified in paragraph (2) of subsection (d).

4 (f) Failure to comply with the requirements of this section shall make
5 any contract to purchase residential real property voidable. A seller of
6 residential real property who fails to comply with the requirements of
7 this section shall be liable for the costs incurred by the buyer of such
8 property for the performance of radon measurement and radon mitiga-
9 tion on such property.

10 New Sec. 2. Sections 3 through 8, and amendments thereto, shall be
11 known and may be cited as the radon certification law.

12 New Sec. 3. As used in this act:

13 (a) "Mitigate" means to repair or alter a building or design for the
14 purpose in whole or in part of reducing the concentration of radon in the
15 indoor atmosphere.

16 (b) "Person" means any individual, corporation, partnership, firm, as-
17 sociation, trust, estate, public or private institution, group, agency, state,
18 political subdivision or agency of a state or political subdivision, or any
19 legal successor or representative thereof.

20 (c) "Radon (Rn)" means the naturally occurring, colorless, odorless,
21 radioactive gaseous element formed by radioactive decay, including ra-
22 don-222, radon-220 (thoron), radon decay products and radon progeny
23 or as defined by rules and regulations adopted by the secretary.

24 (d) "Secretary" means the secretary of health and environment.

25 (e) "Test" means: (1) Examination of a building, soil or air for the
26 presence of radon, including taking air or soil samples; or (2) diagnosis of
27 the cause of radon contamination.

28 New Sec. 4. (a) The secretary shall establish a certification program
29 for persons performing radon tests or mitigation in the state.

30 (b) The secretary shall adopt rules and regulations necessary to ad-
31 minister and implement the provisions of this act. Such rules and regu-
32 lations shall be adopted no later than ~~January 1, 2009.~~ April

33 (c) Within the limitations of appropriation acts, the secretary is au-
34 thorized to employ appropriate personnel necessary to carry out the pro-
35 visions of this act and rules and regulations adopted hereunder.

36 (d) The secretary may enter into agreements with a public or private
37 agency in carrying out the provisions of this act.

38 (e) The secretary may deny, suspend or revoke certification issued
39 under this act for a violation of any provision of this act or any rule and
40 regulation adopted under this act, after notice and hearing in accordance
41 with the provisions of the Kansas administrative procedure act.

42 New Sec. 5. ~~The secretary may establish a schedule of fees to defray~~ (a)
43 all or part of the costs of the radon certification program. The secretary

1 shall remit all moneys received from fees to the state treasurer in ac-
2 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
3 Upon receipt of each such remittance, the state treasurer shall deposit
4 the entire amount in the state treasury and credit it to the radiation con-
5 trol operations fee fund established by K.S.A. 48-1625, and amendments
6 thereto.

7 New Sec. 6. (a) From and after July 1, 2009, no person shall (1) test
8 for radon in this state; (2) manufacture or sell radon testing devices for
9 use in this state; (3) analyze radon testing devices used in this state; or
10 (4) perform radon mitigation in this state without first being certified by
11 the secretary for such purpose.

12 (b) The provisions of this section shall not apply to: (1) A person
13 performing tests or mitigation on a building where such person resides;
14 (2) a person performing tests or mitigation without remuneration; or (3)
15 a person engaged solely in the retail sale of radon testing devices.

16 New Sec. 7. (a) Any person who tests for radon in this state, analyzes
17 radon testing devices used in this state or performs radon mitigation in
18 this state shall make a report of such testing, analysis or mitigation to the
19 secretary. Such report shall be made within 30 days of performance of
20 such testing, analysis or mitigation and shall include the address or loca-
21 tion where the services were provided and the type and results of any
22 tests, analysis or mitigation.

23 (b) All information obtained pursuant to this section shall be confi-
24 dential and shall not be subject to the open records act.

25 (c) The secretary may conduct research studies utilizing the data re-
26 quired to be reported in subsection (a). No report or publication shall
27 include names or addresses of individuals.

28 New Sec. 8. (a) Any person who willfully violates any provision of
29 the radon certification law or any rules and regulations adopted under
30 the radon certification law is guilty of: (1) A class C nonperson misde-
31 meanor, for a first offense; and (2) a class B nonperson misdemeanor, for
32 a second and each subsequent offense.

33 (b) In addition to any other penalty provided by law and after pro-
34 viding notice and a hearing in accordance with the provisions of the Kan-
35 sas administrative procedure act, the secretary may impose a fine in an
36 amount not to exceed \$10,000 against any person who: (1) Violates any
37 provision of the radon certification law and any rule and regulation
38 adopted or order issued thereunder; (2) violates any term, condition or
39 limitation of any certification issued under the radon certification law; or
40 (3) commits any violation for which a certification may be revoked under
41 the radon certification law or any rules and regulations adopted there-
42 under. If any violation is a continuing one, each day of such violation shall
43 constitute a separate violation for the purpose of computing the amount

(b) See attached Insert 2

~~to be redacted~~ insert on. Franicese
owns

(c) See attached Insert 3

(d) The provisions of this section shall not apply to a ~~§~~
person performing tests or mitigation on a building ~~owner~~
where such person resides.

Insert 2:

(b) Subject to the limitations of this section, the secretary may charge and collect fees, in advance for:

Radon measurement technician, application fee, new and annual renewal.....	\$200.00
Radon mitigation technician application fee, new and annual renewal.....	200.00
Radon measurement business, application fee, new and annual renewal.....	500.00
Radon mitigation business, application fee, new and annual renewal.....	500.00
Radon measurement laboratory, application fee, new and annual renewal.....	500.00
Training course, application fee.....	75.00
Returned check or insufficient check.....	50.00
Late application fee, for each month or part thereof.....	50.00

(c) If the owner of a radon measurement business also is a certified radon measurement technician for that business, the radon measurement technician fee for such owner shall be waived. If the owner of a radon mitigation business also is a certified radon mitigation technician for that business, the radon mitigation technician fee for such owner shall be waived.

Insert 3:

(c) (1) A person may not perform radon measurements or represent or advertise that such person may perform radon measurements unless such person has been certified as a radon measurement technician by the department.

(2) Any person desiring to be certified as a radon measurement technician shall submit an application on a form prescribed by the department along with the non-refundable application fee.

(3) (A) Except as provided in paragraph (2), no person shall be certified as a radon measurement technician unless within one year prior to the date of the submission of an application for certification, such person shall have completed successfully a training course and passed an examination on radon measurement, approved by the department.

(B) Applicants who are certified by either the national environmental health association or the national radon safety board on July 1, 2008, and who have been performing the duties of a radon measurement technician for at least one year prior to July 1, 2008, and who have completed an approved training course and passed an examination on radon measurement at any time prior to July 1, 2008, shall be deemed to have met the requirements of paragraph (1).

(d) (1) A person may not perform radon mitigation or represent or advertise that such person may perform radon mitigation unless such person has been certified as a radon mitigation technician by the department.

(2) Any person desiring to be certified as a radon mitigation technician shall submit an application on a form prescribed by the department along with the non-refundable application fee.

(3) Except as provided in paragraph (2), no person shall be certified as a radon mitigation technician unless within one year prior to the date of the submission of an application for certification, such person shall have completed successfully a training course and passed an examination on radon mitigation approved by the department.

(4) Applicants who are certified by either the national environmental health association or the national radon safety board on July 1, 2008, and who have been performing the duties of a radon mitigation technician for at least one year prior to July 1, 2008, and who have completed an approved training course and passed an examination on radon mitigation at any time prior to July 1, 2008, shall be deemed to have met the requirements of paragraph (1).

(e) (1) A person may not operate a radon measurement business or represent or advertise that such person is a radon measurement business unless such person has been certified as a radon measurement business by the department.

(2) Any person desiring to be certified as a radon measurement business shall submit an application on a form prescribed by the department along with the non-refundable application fee.

(3) A radon measurement business shall comply with the radon certification law and with rules and regulations adopted thereunder. A certified radon measurement technician shall own, be employed by or be retained as a consultant by a radon measurement business when such business is performing radon measurements. All radon testing, including the initial placement and final retrieval of all measurement devices and post-mitigation testing, shall be performed only by a radon measurement technician.

(f) (1) A person may not operate a radon mitigation business or represent or advertise that such person is a radon mitigation business unless such person has been certified as a radon mitigation business by the department.

(2) Any person desiring to be certified as a radon mitigation business shall submit an application on a form prescribed by the department along with the non-refundable application fee.

(3) A radon mitigation business shall comply with the radon certification law and with rules and regulations adopted thereunder. A certified radon mitigation technician shall own, be employed by or be retained as a consultant by a radon mitigation business when such business is performing radon mitigation. A radon mitigation business shall ensure that radon mitigation system installations are performed under the supervision of a radon mitigation technician

(g) (1) A person may not perform laboratory analysis or represent or advertise that it may perform laboratory analysis of radon measurement devices or samples unless such person has been designated as an approved radon measurement laboratory by the department.

(2) Any person desiring to be designated as an approved radon measurement laboratory shall submit an application on a form prescribed by the department along with the non-refundable application fee.

(3) A person shall not be designated as an approved radon measurement laboratory unless such person has obtained a laboratory certification from the national environmental health association, the national radon safety board or a national proficiency-testing program approved by the department.

(4) A radon measurement laboratory shall comply with the requirements of the radon certification law and any rules and regulations adopted thereunder.

(5) A designation as an approved radon measurement laboratory shall not be nontransferable.

1 of a civil penalty. Any action by the secretary pursuant to this section is
2 subject to review in accordance with the act for judicial review and civil
3 enforcement of agency actions.

4 (c) On the request of the secretary, the attorney general is authorized
5 to institute a civil action to collect any penalty imposed pursuant to this
6 section.

7 (d) All moneys collected from civil penalties shall be remitted to the
8 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
9 amendments thereto. Upon receipt of each such remittance, the state
10 treasurer shall deposit the entire amount in the state treasury to the credit
11 of the state general fund.

12 Sec. 9. K.S.A. 48-1625 is hereby amended to read as follows: 48-
13 1625. (a) There is hereby created in the state treasury the radiation con-
14 trol operations fee fund to administer the provisions of K.S.A. 48-1601
15 through 48-1624, and amendments thereto. Such fund shall be adminis-
16 tered by the secretary of health and environment in accordance with the
17 provisions of this section.

18 (b) Revenue from the following sources shall be deposited in the state
19 treasury and credited to the radiation control operations fee fund:

20 (1) Fees collected for licenses and registrations, and renewals thereof,
21 issued under the nuclear energy development and radiation control act;

22 (2) reimbursement for administrative, inspection, radioactive mate-
23 rial disposal, investigation and remedial action expenses;

24 (3) excluding civil penalties, moneys paid pursuant to any agreement,
25 stipulation or settlement;

26 (4) grants, gifts, bequests or state appropriations for the purposes of
27 K.S.A. 48-1601 through 48-1624, and amendments thereto; ~~and~~

28 (5) *fees collected pursuant to section 5, and amendments thereto; and*

29 ~~(5) (6)~~ (6) interest attributable to investment of moneys in the fund.

30 Moneys described in this subsection which are received by the secre-
31 tary shall be remitted by the secretary to the state treasurer in accordance
32 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
33 receipt of each such remittance the state treasurer shall deposit the entire
34 amount in the state treasury to the credit of such fund.

35 The secretary of health and environment is authorized to receive from
36 the federal government or any of its agencies or from any private or
37 governmental source any funds made available for the purposes of K.S.A.
38 48-1601 through 48-1624, and amendments thereto.

39 (c) The secretary is authorized to use moneys from the radiation con-
40 trol operations fee fund to pay the cost of:

41 (1) All activities related to licensing and registration, including but
42 not limited to, development and issuance of licenses, registrations and
43 renewals thereof, compliance monitoring, inspections, long term moni-

- 1 toring and enforcement actions and decontamination, decommissioning,
2 reclamation or remedial actions;
- 3 (2) design and review of radioactive waste disposal facilities;
- 4 (3) review and witnessing of test and repair procedures;
- 5 (4) investigation of violations, complaints, pollution and events af-
6 fecting the environment or public health;
- 7 (5) design and review of remedial action plans;
- 8 (6) personnel training programs;
- 9 (7) contracting for services needed to supplement the department's
10 staff expertise in administering the provisions of K.S.A. 48-1601 through
11 48-1624, and amendments thereto;
- 12 (8) staff consultation needed to provide radiation protection services
13 provided under this act;
- 14 (9) mitigation of adverse environmental or public health impacts, in-
15 cluding impounding sources of radiation;
- 16 (10) emergency or long-term remedial activities;
- 17 (11) administrative, technical and legal costs incurred by the secretary
18 in administering the provisions of K.S.A. 48-1601 through 48-1624, and
19 amendments thereto; ~~and~~
- 20 (12) costs of program administration, including the state's share of
21 any grant received from the federal government or from other sources,
22 public or private; *and*
- 23 (13) *costs of administration of the radon certification law and the*
24 *radon awareness law.*
- 25 (d) On or before the 10th of each month, the director of accounts
26 and reports shall transfer from the state general fund to the radiation
27 control operations fee fund interest earnings based on:
- 28 (1) The average daily balance of moneys in the radiation control op-
29 erations fee fund for the preceding month; and
- 30 (2) the net earnings rate of the pooled money investment portfolio
31 for the preceding months.
- 32 (e) All expenditures from this fund shall be made in accordance with
33 appropriation acts and upon warrants of the director of accounts and
34 reports issued pursuant to vouchers approved by the secretary of health
35 and environment for the purposes set forth in this section.
- 36 Sec. 10. K.S.A. 48-1625 is hereby repealed.
- 37 Sec. 11. This act shall take effect and be in force from and after its
38 publication in the statute book.

Part of bill to be attached here
acknowledgment

deletes future
negot

Session of 2009

SENATE BILL No. 577

By Committee on Federal and State Affairs

2-7

9 AN ACT enacting the radon awareness law and the radon certification
10 law; amending K.S.A. 48-1625 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) This section shall be known and may be cited as
14 the radon awareness law.

15 (b) As used in the radon awareness law:

16 (1) Words and phrases used in this section have the meanings as-
17 cribed thereto in section 3, and amendments thereto.

18 (2) "Residential real property" means any ~~estate or interest in a man-~~
19 ~~ufactured housing lot or a parcel of~~ residential real property, improved
20 with not less than one nor more than four residential dwelling units.

21 (c) ~~The secretary of the department of health and environment shall~~
22 ~~administer the radon awareness law.~~

23 (d) (1) From and after January 1, 2009, before entering into a con-
24 tract for the sale of residential real property, the seller of such property
25 shall provide to the buyer of any interest in such property the pamphlet
26 entitled "Radon Testing Guidelines for Residential Real Property Trans-
27 actions" or an equivalent pamphlet approved for use by the department
28 which states that the property may present the potential for exposure to
29 radon. In addition, the seller shall disclose any information known to the
30 seller which shows elevated concentrations of radon in such property and
31 shall provide the buyer with all available records and reports pertaining
32 to elevated radon concentrations in such property. ~~On a form provided~~
33 ~~by the department, the seller of residential real property shall acknowl-~~
34 ~~edge that the information required to be disclosed pursuant to this sub-~~
35 ~~section has been so disclosed.~~

36 If the disclosures required by this subsection occur after the buyer
37 has made an offer to purchase the residential real property, the seller
38 shall complete the required disclosures prior to accepting the buyer's
39 offer and allow the buyer an opportunity to review the information and
40 possibly amend the offer. Failure to comply with the requirements of this
41 section shall make any contract to purchase residential real property
42 voidable.

43 (2) The provisions of this subsection shall not apply to:

which is

(c) On and after July 1, 2009, each contract for the sale of residential real property shall contain the following language: "Every buyer of residential real property is notified that the property may present exposure to dangerous levels of indoor radon gas that may place occupants at risk of developing radon-induced lung cancer. Radon, a Class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires sellers to disclose any information known to the seller that shows elevated concentrations of radon gas in residential real property. The Kansas Department of Health and Environment recommends all homebuyers have an indoor radon test performed prior to the purchase or taking occupancy of residential real property. All testing for radon should be conducted by a certified radon measurement professional. Elevated radon concentrations can be easily reduced by a certified radon mitigator."

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(d) The seller of residential real property

The buyer and seller

in the contract for sale of the residential real property

(e)

in bold font

(Similar to a provision in HB 2295)

1 (A) Transfers pursuant to court order including, but not limited to,
2 transfers ordered by a probate court in administration of an estate, trans-
3 fers between spouses resulting from a judgment of dissolution of marriage
4 or legal separation, transfers pursuant to an order of possession, transfers
5 by a trustee in bankruptcy, transfers by eminent domain or transfers res-
6 sulting from a decree for specific performance;

7 (B) transfers from a mortgagor to a mortgagee by deed in lieu of
8 foreclosure or consent judgment, transfer by judicial deed issued pursu-
9 ant to a foreclosure sale to the successful bidder or the assignee of a
10 certificate of sale, transfer by a collateral assignment of a beneficial in-
11 terest of a land trust or transfer by a mortgagee or a successor in interest
12 to the mortgagee's secured position or a beneficiary under a deed in trust
13 who has acquired the real property by deed in lieu of foreclosure, consent
14 judgment or judicial deed issued pursuant to a foreclosure sale;

15 (C) transfers by a fiduciary in the course of the administration of a
16 decedent's estate, guardianship, conservatorship or trust;

17 (D) transfers from one co-owner to one or more other co-owners;

18 (E) transfers pursuant to estate or intestate succession;

19 (F) transfers made to a spouse, or to a person or persons in the lineal
20 line of consanguinity of one or more of the sellers;

21 (G) transfers from an entity that has taken title to residential real
22 property from a seller for the purpose of assisting in the relocation of the
23 seller, so long as the entity makes available to all prospective buyers a
24 copy of the disclosure form furnished to the entity by the seller; or

25 (H) transfers of an unimproved lot or parcel of residential real
26 property.

27 (c) (1) From and after July 1, 2011, before entering into a contract
28 for the sale of residential real property, the radon level of such property
29 shall be determined either by:

30 (A) Radon measurements performed on such property by the seller
31 using radon measurement kits approved by the secretary. Radon meas-
32 urements performed pursuant to this paragraph shall be performed in
33 compliance with standards prescribed in rules and regulations adopted
34 by the secretary;

35 (B) a radon measurement performed on such property by a certified
36 radon measurement technician; or

37 (C) a written acceptance by the buyer of radon measurements on
38 such property disclosed by the seller of the property, in compliance with
39 subsection (d)(1).

40 (2) If the radon measurement is not performed on any residential
41 real property prior to the buyer making an offer on such property, the
42 requirement to measure the radon level of such property shall continue
43 as allowed under subsection (c)(1), but the buyer may amend or withdraw

Elimination of testing

deletes mandatory testing requirement

1 the offer without penalty therefor.

2 (3) The provisions of this subsection shall not apply to transfers spec-
3 ified in paragraph (2) of subsection (d).

4 (f) Failure to comply with the requirements of this section shall make
5 any contract to purchase residential real property voidable. A seller of
6 residential real property who fails to comply with the requirements of
7 this section shall be liable for the costs incurred by the buyer of such
8 property for the performance of radon measurement and radon mitiga-
9 tion on such property.

10 New Sec. 2. Sections 3 through 8, and amendments thereto, shall be
11 known and may be cited as the radon certification law.

12 New Sec. 3. As used in this act:

13 (a) "Mitigate" means to repair or alter a building or design for the
14 purpose in whole or in part of reducing the concentration of radon in the
15 indoor atmosphere.

16 (b) "Person" means any individual, corporation, partnership, firm, as-
17 sociation, trust, estate, public or private institution, group, agency, state,
18 political subdivision or agency of a state or political subdivision, or any
19 legal successor or representative thereof.

20 (c) "Radon (Rn)" means the naturally occurring, colorless, odorless,
21 radioactive gaseous element formed by radioactive decay, including ra-
22 don-222, radon-220 (thoron), radon decay products and radon progeny
23 or as defined by rules and regulations adopted by the secretary.

24 (d) "Secretary" means the secretary of health and environment.

25 (e) "Test" means: (1) Examination of a building, soil or air for the
26 presence of radon, including taking air or soil samples; or (2) diagnosis of
27 the cause of radon contamination.

28 New Sec. 4. (a) The secretary shall establish a certification program
29 for persons performing radon tests or mitigation in the state.

30 (b) The secretary shall adopt rules and regulations necessary to ad-
31 minister and implement the provisions of this act. Such rules and regu-
32 lations shall be adopted no later than ~~January 1, 2009.~~ April 1

33 (c) Within the limitations of appropriation acts, the secretary is au-
34 thorized to employ appropriate personnel necessary to carry out the pro-
35 visions of this act and rules and regulations adopted hereunder.

36 (d) The secretary may enter into agreements with a public or private
37 agency in carrying out the provisions of this act.

38 (e) The secretary may deny, suspend or revoke certification issued
39 under this act for a violation of any provision of this act or any rule and
40 regulation adopted under this act, after notice and hearing in accordance
41 with the provisions of the Kansas administrative procedure act.

42 New Sec. 5. The secretary may establish a schedule of fees to defray
43 all or part of the costs of the radon certification program. The secretary

1 shall remit all moneys received from fees to the state treasurer in ac-
2 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
3 Upon receipt of each such remittance, the state treasurer shall deposit
4 the entire amount in the state treasury and credit it to the radiation con-
5 trol operations fee fund established by K.S.A. 48-1625, and amendments
6 thereto.

7 New Sec. 6. (a) From and after July 1, 2009, no person shall (1) test
8 for radon in this state; (2) manufacture or sell radon testing devices for
9 use in this state; (3) analyze radon testing devices used in this state; or
10 (4) perform radon mitigation in this state without first being certified by
11 the secretary for such purpose.

12 (b) The provisions of this section shall not apply to: (1) A person
13 performing tests or mitigation on a building where such person resides;
14 (2) a person performing tests or mitigation without remuneration; or (3)
15 a person engaged solely in the retail sale of radon testing devices.

16 New Sec. 7. (a) Any person who tests for radon in this state, analyzes
17 radon testing devices used in this state or performs radon mitigation in
18 this state shall make a report of such testing, analysis or mitigation to the
19 secretary. Such report shall be made within 30 days of performance of
20 such testing, analysis or mitigation and shall include the address or loca-
21 tion where the services were provided and the type and results of any
22 tests, analysis or mitigation.

23 (b) All information obtained pursuant to this section shall be confi-
24 dential and shall not be subject to the open records act.

25 (c) The secretary may conduct research studies utilizing the data re-
26 quired to be reported in subsection (a). No report or publication shall
27 include names or addresses of individuals.

28 New Sec. 8. (a) Any person who willfully violates any provision of
29 the radon certification law or any rules and regulations adopted under
30 the radon certification law is guilty of: (1) A class C nonperson misde-
31 meanor, for a first offense; and (2) a class B nonperson misdemeanor, for
32 a second and each subsequent offense.

33 (b) In addition to any other penalty provided by law and after pro-
34 viding notice and a hearing in accordance with the provisions of the Kan-
35 sas administrative procedure act, the secretary may impose a fine in an
36 amount not to exceed \$10,000 against any person who: (1) Violates any
37 provision of the radon certification law and any rule and regulation
38 adopted or order issued thereunder; (2) violates any term, condition or
39 limitation of any certification issued under the radon certification law; or
40 (3) commits any violation for which a certification may be revoked under
41 the radon certification law or any rules and regulations adopted there-
42 under. If any violation is a continuing one, each day of such violation shall
43 constitute a separate violation for the purpose of computing the amount

1 of a civil penalty. Any action by the secretary pursuant to this section is
2 subject to review in accordance with the act for judicial review and civil
3 enforcement of agency actions.

4 (c) On the request of the secretary, the attorney general is authorized
5 to institute a civil action to collect any penalty imposed pursuant to this
6 section.

7 (d) All moneys collected from civil penalties shall be remitted to the
8 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
9 amendments thereto. Upon receipt of each such remittance, the state
10 treasurer shall deposit the entire amount in the state treasury to the credit
11 of the state general fund.

12 Sec. 9. K.S.A. 48-1625 is hereby amended to read as follows: 48-
13 1625. (a) There is hereby created in the state treasury the radiation con-
14 trol operations fee fund to administer the provisions of K.S.A. 48-1601
15 through 48-1624, and amendments thereto. Such fund shall be adminis-
16 tered by the secretary of health and environment in accordance with the
17 provisions of this section.

18 (b) Revenue from the following sources shall be deposited in the state
19 treasury and credited to the radiation control operations fee fund:

20 (1) Fees collected for licenses and registrations, and renewals thereof,
21 issued under the nuclear energy development and radiation control act;

22 (2) reimbursement for administrative, inspection, radioactive materi-
23 al disposal, investigation and remedial action expenses;

24 (3) excluding civil penalties, moneys paid pursuant to any agreement,
25 stipulation or settlement;

26 (4) grants, gifts, bequests or state appropriations for the purposes of
27 K.S.A. 48-1601 through 48-1624, and amendments thereto; ~~and~~

28 (5) fees collected pursuant to section 5, and amendments thereto; and
29 ~~(6)~~ (6) interest attributable to investment of moneys in the fund.

30 Moneys described in this subsection which are received by the secre-
31 tary shall be remitted by the secretary to the state treasurer in accordance
32 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
33 receipt of each such remittance the state treasurer shall deposit the entire
34 amount in the state treasury to the credit of such fund.

35 The secretary of health and environment is authorized to receive from
36 the federal government or any of its agencies or from any private or
37 governmental source any funds made available for the purposes of K.S.A.
38 48-1601 through 48-1624, and amendments thereto.

39 (c) The secretary is authorized to use moneys from the radiation con-
40 trol operations fee fund to pay the cost of:

41 (1) All activities related to licensing and registration, including but
42 not limited to, development and issuance of licenses, registrations and
43 renewals thereof, compliance monitoring, inspections, long term moni-

1 toring and enforcement actions and decontamination, decommissioning,
2 reclamation or remedial actions;
3 (2) design and review of radioactive waste disposal facilities;
4 (3) review and witnessing of test and repair procedures;
5 (4) investigation of violations, complaints, pollution and events af-
6 fecting the environment or public health;
7 (5) design and review of remedial action plans;
8 (6) personnel training programs;
9 (7) contracting for services needed to supplement the department's
10 staff expertise in administering the provisions of K.S.A. 48-1601 through
11 48-1624, and amendments thereto;
12 (8) staff consultation needed to provide radiation protection services
13 provided under this act;
14 (9) mitigation of adverse environmental or public health impacts, in-
15 cluding impounding sources of radiation;
16 (10) emergency or long-term remedial activities;
17 (11) administrative, technical and legal costs incurred by the secretary
18 in administering the provisions of K.S.A. 48-1601 through 48-1624, and
19 amendments thereto; ~~and~~
20 (12) costs of program administration, including the state's share of
21 any grant received from the federal government or from other sources,
22 public or private; *and*
23 (13) *costs of administration of the radon certification law and the*
24 *radon awareness law.*
25 (d) On or before the 10th of each month, the director of accounts
26 and reports shall transfer from the state general fund to the radiation
27 control operations fee fund interest earnings based on:
28 (1) The average daily balance of moneys in the radiation control op-
29 erations fee fund for the preceding month; and
30 (2) the net earnings rate of the pooled money investment portfolio
31 for the preceding months.
32 (e) All expenditures from this fund shall be made in accordance with
33 appropriation acts and upon warrants of the director of accounts and
34 reports issued pursuant to vouchers approved by the secretary of health
35 and environment for the purposes set forth in this section.
36 Sec. 10. K.S.A. 48-1625 is hereby repealed.
37 Sec. 11. This act shall take effect and be in force from and after its
38 publication in the statute book.

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February 19, 2008

To: Senate Federal and State Affairs Committee

From: Kathie Sparks, Principal Analyst

Re: Immigration

The following memorandum will examine employment and illegal immigration; the federal E-Verify Program; and benefits.

Employment and Illegal Immigration

The responsibility for employment verification arises from the federal Immigration Reform and Control Act of 1986. The federal Act requires each employer to have in his or her records a completed Form I-9, Employment Eligibility Verification, for each and every employee, including U.S. citizens hired after November 6, 1986. A Form I-9 is attached. A form also is to be completed for:

- Providers of domestic services that are sporadic, irregular, or intermittent in a private household;
- Providers of services for an employer as an independent contractor, *i.e.*, one having an independent business, contracting to do work according to the contractor's means and methods, being subject to the employer's control only as to results, setting one's work hours, providing tools necessary to do the job, and having authority to hire and fire; and
- Providers of services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for I-9 purposes; for example, a temporary employment agency.)

Unlike tax forms, I-9 forms are **not** filed with the U.S. government. The requirement is for employers to maintain I-9 records in their own files for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters or other location, but the storage choice must make it possible for the documents to be transmitted to the worksite within three days of an official request for production of the documents for inspection.

The Form I-9 is published in English only. A new employee must complete the form no later than the close of business on his or her first day of work. The employee's signature holds him or her responsible for the accuracy of the information provided. The employer is responsible for ensuring the employee completes the form in full. The employer must review documentation presented by

the employee and record information documenting work in the U.S. and that the employee who presents the employment authorization document is the person to whom it was issued. The employer is to supply the employee the official list of acceptable documents (see attachment 1, page 2) for establishing identity and work eligibility.

According to the Immigration and Naturalization Services website, employers are not required to be document experts. In reviewing the genuineness of the documents presented by employees, employers are held to a reasonableness standard. The website does not give a definition of "reasonableness" for this purpose. In addition, there are two separate and unrelated photocopy issues in the employment eligibility verification process. The first is whether an employer may accept photocopies of identity or employment eligibility documents to fulfill I-9 requirements. The answer is that only original documents (not necessarily the first document of its kind ever issued to the employee, but an actual document issued by the issuing authority) are satisfactory, with the single exception of a certified photocopy of a birth certificate. The second is whether the employer may or must attach photocopies of documentation submitted to satisfy Form I-9 requirements to the employee's Form I-9. The answer is that this is permissible, but not required. Where this practice is undertaken by an employer, it must be applied consistently to every employee, without regard to citizenship or national origin.

On page 2 of attachment I, note the three columns: documents that establish both identity and employment eligibility; documents that establish identity; and documents that establish employment eligibility and the fact that the only document under state control is birth certificates.

Paperwork violations can result in a civil penalty of \$110 to \$1,100 per each Form I-9. The actual penalty is determined by authorized federal authorities or an administrative law judge with consideration given to the size of the business, the good faith of the employer, the seriousness of the violation, whether or not the individual is an unauthorized alien, and the history of previous violations. Employers may request a hearing with an administrative law judge to contest a Notice of Intent to Fine issued by federal authorities. Civil penalties for accepting fraudulent documents include, but are not limited to: \$250 to \$2,000 per fraudulent document for first violation; \$2,000 to \$5,000 per fraudulent document for subsequent violations.

E-Verify Program

History

The federal Department of Homeland Security (DHS) and the Social Security Administration (SSA) are jointly conducting the E-Verify program. The Program involves verification checks of the SSA and DHS databases, using an automated system to verify the employment authorization of all newly hired employees.

The program has been in operation since November 1997 under the Basic Pilot Program. Legislation signed by the President on December 3, 2003, extended the program until November 2008, and expanded the program to all 50 states and the District of Columbia. The Basic Pilot Program was renamed the E-Verify Program in 2007 and enhancements were added which will be discussed below. The program is voluntary for all employers except for the more than 200,000 federal contractors required to participate by DHS and in Georgia, Colorado, Oklahoma, and Arizona, states that have enacted legislation that mandates the use of E-Verify, and in Idaho, North Carolina, Pennsylvania, and Missouri whose state agencies participate in the program.

Program Requirements

In E-Verify, within three days of the employee's hire date an employer fills out an online form with the new employee's name, date of birth, and Social Security Number (SSN), and, if the new hire states he or she is not a U.S. citizen, the "A" number or I-94 number. This information is checked against Social Security Administration databases to verify the name, SSN, and date of birth of newly-hired employees, regardless of citizenship. The SSA maintains a record of each Social Security card, both original and replacement cards, in a system of records called the Numerical Identification File (NUMIDENT). NUMIDENT includes all relevant data connected to the issuance of the Social Security card, including the appropriate codes related to citizenship status and the type of Social Security card issued. There are three types of Social Security cards, and an individual is assigned a particular type depending on the citizenship and work-authorization status of the individual.

Users can access the program from any Internet capable personal computer. Some features of the Internet version include online-registration, reporting capability for users, electronic I-9 form submission for verification, and availability of the system 19 hours a day. To participate, an employer must register and sign a Memorandum of Understanding that sets forth the responsibilities of each party. Any employers who participate in the program must agree to a Form I-9 audit by U.S. Immigration and Customs Enforcement (ICE).

If the work authorization cannot be determined by the data in the SSA databases, or if the employee is a non-citizen, the person's data is checked against the Department of Homeland Security databases to verify employment eligibility. If eligibility cannot be confirmed, E-Verify sends a tentative nonconfirmation of work authorization status to the employer. There are several reasons for a tentative nonconfirmation determination, including when the SSN, name, or date of birth does not match the information in SSA's database or if a death indicator is present; if the new hire indicated he or she is a U.S. citizen and SSA's records did not show that the person is a U.S. citizen; or if the DHS database does not show the newly-hired noncitizen as authorized for employment.

The employer must inform the employee of the tentative nonconfirmation and the employee has eight business days to contest this decision. If the employee contests the determination, SSA or DHS is required to determine work-authorization status within 10 federal working days. If this review by the federal agency still cannot determine if the employee is eligible to work in the United States, a final nonconfirmation is issued. A final nonconfirmation also is issued if the employee does not contest the tentative nonconfirmation. A final nonconfirmation means the employee must be fired.

Penalties

Knowingly Hiring and/or Continuing to Employ Unauthorized Workers:

- \$275 to \$2,200 per worker for first-time violators
- \$2,200 to \$5,500 per worker for second-time violators
- \$3,300 to \$11,000 per worker for entities with two or more previous violations

Pattern of Knowingly Hiring and/or Continuing to Employ Unauthorized Workers:

- Criminal penalties include, but are not limited to, a fine of up to \$3,000 per worker and/or up to six months in jail.

Violations of Verification Procedures:

- \$100 to \$1,000 per violation

National Origin Discrimination

Civil penalties include but are not limited to:

- \$250 to \$2,000 per worker for first-time violators
- \$2,000 to \$5,000 per worker for second-time violators
- \$3,000 to \$10,000 per worker for each additional violation

Compensatory and punitive damages:

- \$50,000 cap for 15 to 100 employees
- \$100,000 cap for 101 to 200 employees
- \$200,000 cap for 201 to 500 employees
- \$300,000 cap for more than 500 employees

Weaknesses in the E-Verify Program

The Government Accountability Office (GAO) issued a comprehensive report on weaknesses in the then Basic Pilot Program in August of 2005. The National Immigration Law Center in October 2005 and a Report to Congress issued by the Department of Homeland Security in June 2004 also outlined weaknesses in the system. These weaknesses are as follows.

Insufficient Resources to Expand the Program

The agency does not currently have the resources to expand the program to all private and public employers throughout the county if it were to become mandatory. As of early 2006, the agency had only 38 Immigration Status Verifiers assigned to the Basic Pilot Program. The number of Immigration Status Verifiers would need to be greatly expanded if participation became mandatory nationwide in order to complete verifications in a timely manner. In addition, the agency has not developed the performance measures that would be necessary to determine what level of resources would be needed for a sweeping increase in program participation according to a GAO report from 2005.

Inability to Detect Identity Fraud

Fraudulent use of identification belonging to others remains a significant impediment to the program. Employers must make their best effort to determine whether the documents presented to them belong to the employee without engaging in unfair discrimination based on national origin or ethnicity just as they must do when completing Form I-9. The program does not address the confusion employers experience related to the 27 types of acceptable documents or the difficulty they face in detecting identity fraud. (The number of acceptable documents was reduced during the summer of 2007.) If an unauthorized worker presents documents belonging to someone who is authorized to work or counterfeit documents with valid information, the system will show that employee as being authorized to work. The E-Verify Program has added a new requirement for photo identification during 2008; however, the database with photo identifications includes less than 4.0 million photos at this time.

Erroneous Nonconfirmation Results

Employees have received erroneous tentative nonconfirmation results from the program, and the employees, employers, and government have incurred costs in resolving these errors. In FY 2004, 15 percent of the queries that were referred to DHS required manual verification by Immigration Status Verifiers. Among those cases, several took more than the targeted 24 hours to complete, and a few took as long as two weeks. Some errors are caused by employers accidentally making mistakes when they enter employee information in the system, or Immigration Status Verifiers making mistakes when they re-enter the information in supplemental DHS databases. However, the most common source of errors is delays in work authorization data being entered in the DHS databases. The primary cause is the fact that United States Citizenship and Immigration Services field offices and ports of entry for refugees issue work authorizations on computers that are not linked to DHS databases. Approximately one-quarter of all employment authorization documents for new legal immigrants were issued by offices with computers that are not linked to the main DHS database as recently as 2005.

An employee who is put out of work based on an erroneous result from the program can subject an employer to claims for wages. DHS believes the agency has immunity from reimbursing employees for lost wages. Terminating an employee who appears on a no-match letter, but who is actually authorized to work, can lead to civil rights and other lawsuits against employers. Marriages, divorces, misspellings, and use of a middle initial rather than full middle name can all result in a mismatch.

Noncompliance with Program Procedures

Some employers may not fully understand the requirements of the program, while a few others may abuse the system. DHS is not able to estimate how much it would cost to verify regularly that employers are properly following the procedures of the program.

E-Verify Program Litigation

Shortly after DHS announced changes to E-Verify (Summer of 2007), the AFL-CIO and National Immigration Law Center filed suit to bar the implementation of the DHS rule on "no match" letters permanently. The new rule would require employers to fire employees if they were unable

to resolve "no match" discrepancies within 90 days. If the employers did not terminate the workers' employment, the businesses would face fines of \$11,000 or more. The lawsuit is pending in federal court. The judge has issued a temporary restraining order blocking DHS from implementing the new rule.

Federal Immigration Benefits

Undocumented immigrants under 8 USCS 1611 are not eligible for any federal benefit except:

- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition;
- Short-term, non cash, in-kind emergency disaster relief;
- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases;
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General; and
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development.

Federal benefits under 8 USCS 1611 are defined as:

- Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States, or by appropriated funds of the United States; and
- Any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefits, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States, or by appropriated funds of the United States.

Under 8 USCS 1621, these same prohibitions on, and exceptions for, federal benefits would apply to state and local benefits, except the exception for housing or community development assistance or financial assistance programs.

A state may provide that an undocumented immigrant, who would otherwise be ineligible is eligible for any state or local public benefit, only through enactment of a state law.

Federal Public Benefit Interpretation

Notice Eligibility for Public Benefits Verification--Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA):

"Federal means-tested public benefits" include:

- Temporary Assistance for Needy Families (TANF);
- Aid to Families with Dependent Children (AFDC);
- Supplemental Security Income (SSI); and
- Food Stamps, Medicaid, and Children's Health Insurance Program (CHIP) benefits.

Any noncitizen who does not meet the definition of qualified alien is considered a nonqualified alien for the purpose of determining eligibility for benefits. "Undocumented" or illegal immigrants fall into the nonqualified category, as do aliens considered to be nonimmigrants, such as students or foreign visitors, and others who are lawfully present in the United States, such as applicants for asylum.

Qualified Aliens' Eligibility for Federal Benefits

The Welfare Reform Act and legislation amending it address qualified aliens' eligibility for three categories of federal benefits:

- Food stamps;
- SSI; and
- Other federal means-tested public benefits.

All these benefits have other eligibility criteria that individual recipients, including qualified aliens, must meet.

SOURCE: <http://ncinfo.iog.unc.edu/pubs/electronicversions/pg/immi.htm>

Federal Means-Tested Public Benefits

The Welfare Reform Act made qualified aliens who enter the United States after August 22, 1996, ineligible to receive any "federal means-tested public benefit" for five years after lawful admission to the United States.

The Welfare Reform Act did not define "federal means-tested public benefit." Significantly, however, it specified several important public benefits that are not subject to the five-year waiting period:

- Medicaid for emergency services (although not organ transplants) for people who otherwise meet Medicaid eligibility criteria;
- Immunizations; and
- Testing for and treatment of symptoms of communicable diseases.

Also exempted from the five-year waiting period are programs, services, or assistance specified by the U.S. Attorney General that:

- deliver in-kind (noncash) services at the community level;
- do not condition assistance on the recipient's income or resources; and
- are necessary for the protection of life or safety.

This potentially expansive exemption also applies to non-qualified aliens and is discussed later in connection with that group.

Non-exempted providers of such benefits (see the exception from verification requirements for nonprofit charitable organizations below) must verify the citizenship and immigration status of applicants in order to deny federal public benefits to non-qualified aliens.

Exceptions:

Adoption Assistance
Administration on Developmental Disabilities (ADD) * State Developmental Disabilities Councils (direct services only)
ADD * Special Projects (direct services only)
ADD * University Affiliated Programs (clinical disability assessment services only)
Adult Programs/Payments to Territories
Agency for Health Care Policy and Research Dissertation Grants
Child Care and Development Fund
Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
Foster Care
Health Profession Education and Training Assistance
Independent Living Program
Job Opportunities for Low-Income Individuals (JOLI)
Medicare (except that an alien who is lawfully present and was authorized to be employed with respect to wages used to establish his or her Medicare Part A entitlement, is eligible for Medicare benefits. For a definition of "lawfully present aliens," see 8 CFR 103.12.)
Medicaid (except assistance for an emergency medical condition)
Mental Health Clinical Training Grants
Native Hawaiian Loan Program
Refugee Cash Assistance
Refugee Medical Assistance
Refugee Preventive Health Services Program
Refugee Social Services Formula Program
Refugee Social Services Discretionary Program
Refugee Targeted Assistance Formula Program
Refugee Targeted Assistance Discretionary Program
Refugee Unaccompanied Minors Program
Refugee Voluntary Agency Matching Grant Program
Repatriation Program
Residential Energy Assistance Challenge Option (REACH)
Social Services Block Grant (SSBG)
State Child Health Insurance Program (CHIP), and
Temporary Assistance for Needy Families (TANF).

No other programs have been determined to be "federal public benefit" programs.

SOURCE DHHS: <http://www.aspe.hhs.gov/hsp/immigration/restrictions-sum.htm>

If you have any questions, please do not hesitate to contact me.

Enclosure

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last		First	Middle Initial	Maiden Name
Address (Street Name and Number)			Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #	
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.		I attest, under penalty of perjury, that I am (check one of the following):		
		<input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A lawful permanent resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____		
Employee's Signature				Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____	Document #: _____
Expiration Date (if any): _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

LIST A

**Documents that Establish Both
Identity and Employment
Eligibility**

LIST B

**Documents that Establish
Identity**

LIST C

**Documents that Establish
Employment Eligibility**

	OR	AND
1. U.S. Passport (unexpired or expired)	1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	1. U.S. Social Security card issued by the Social Security Administration <i>(other than a card stating it is not valid for employment)</i>
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	2. Certification of Birth Abroad issued by the Department of State <i>(Form FS-545 or Form DS-1350)</i>
3. An unexpired foreign passport with a temporary I-551 stamp	3. School ID card with a photograph	3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph <i>(Form I-766, I-688, I-688A, I-688B)</i>	4. Voter's registration card	4. Native American tribal document
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer	5. U.S. Military card or draft record	5. U.S. Citizen ID Card <i>(Form I-197)</i>
	6. Military dependent's ID card	6. ID Card for use of Resident Citizen in the United States <i>(Form I-179)</i>
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	7. Unexpired employment authorization document issued by DHS <i>(other than those listed under List A)</i>
	9. Driver's license issued by a Canadian government authority	
	For persons under age 18 who are unable to present a document listed above:	
	10. School record or report card	
	11. Clinic, doctor or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

TO: Senate Committee on Federal and State Affairs
FROM: Melissa Doeblin, Assistant Revisor of Statutes
DATE: Tuesday, February 26, 2008
SUBJECT: Staff Overview of Senate Bill 458

Senate Bill 458 enacts the Kansas Illegal Immigration Relief Act. New section 1 provides definitions for terms used in the act. Subsections (f) and (i) both provide definitions for “public employer.” The preferred definition is in subsection (i), and at the appropriate time the committee is advised to make a technical amendment striking the definition on page 2 in lines 4 to 5.

New section 2 makes it unlawful for any business entity to knowingly hire, recruit or refer for a fee for employment in Kansas an unauthorized alien. Business entities are required to register with and utilize e-verify to verify employment authorization of all new employees, and must comply with these requirements on and after January 1, 2009. These entities must retain documentation showing verification of employment authorization for every employee for up to 3 years after termination of employment.

On and after January 1, 2009, public employers: (1) are required to register with and utilize e-verify to verify employment of new employees, and (2) shall not enter into contracts for service unless the contractor is registered with and utilizing e-verify. This requirement does not apply to contracts entered into before January 1, 2009, even if labor is performed after that date.

If a business entity violates the provisions of new section 2, the first time the court shall suspend all licenses of the entity for 10 to 30 days; the second time the court shall suspend all licenses for 90 days to 1 year; the third time the court shall permanently suspend all licenses and shall revoke registration as a corporation.

A rebuttable presumption of an employee’s immigration status is created by the most recent determination of immigration status of an employee by federal government. A rebuttable presumption that employer didn’t knowingly employ an unauthorized alien is created if business entity has complied in good faith with this section.

New section 3 provides that no compensation paid to an unauthorized alien employee may be claimed as a deductible business expense for state income tax purposes. No compensation paid to an independent contractor may be claimed as a deductible business expense for state income tax purposes if the contractor is not registered with and utilizing e-verify.

Also in new section 3, employers must submit an affidavit to the Department of Revenue with their annual tax returns, stating whether the employer: (1) utilized a business expense or loss deduction in determining federal adjusted gross income; (2) employed employees or independent contractors, and the number of each; (3) is enrolled in and participating in e-verify; (4) has used e-verify to confirm employment eligibility for new employees employed after January 1, 2009; and (5) has confirmed that independent contractors have registered with and are utilizing e-verify. The affidavit must also provide the employer's identification number to show the employer is enrolled in e-verify.

The Department of Revenue may audit any employer who fails to submit an affidavit or if the Department has probable cause to believe the employer is not complying with this section. If the Department determines the employer has knowingly made material misrepresentation of fact regarding affidavit information, employer shall be required to add back business deductions taken in determining adjusted gross income.

New section 4 creates a new crime of "employment identity fraud," which is willfully presenting an employer false or misleading identification documents for the purpose of obtaining employment in Kansas. This type of fraud is a severity level 8, nonperson felony.

New section 5 prohibits aliens who aren't lawfully present in the United States from receiving state or local public benefits (which is defined on page 5, new section 5(b)). An applicant who is 18 or older and applying for public benefits shall first establish either that he or she is a citizen or lawful permanent resident of the United States or lawfully present in the United States. Applicants who are aliens may not receive public benefits unless the lawful presence is first verified by the federal government. The repealer, section 13, repeals the immigration resident tuition statute, K.S.A. 76-731a, which was established in 2004 to provide that certain persons without lawful immigration status were deemed residents for purposes of tuition and fees in state educational institutions.

New section 6 provides that state officials, agencies and personnel shall comply with federal laws prohibiting entry into, presence or residence of aliens in violation of federal immigration law. Additionally, law enforcement officers shall inquire into citizenship and immigration status if a person is arrested. If the person indicates that he or she is not a resident or national of the United States, the officer shall verify with the federal government whether the alien is lawfully or unlawfully present in the United States. If the alien is unlawfully present, the officer shall cooperate with a request to detain or transfer the alien.

Also in new section 6, state, county or city law enforcement agency is in violation of these provisions if the attorney general determines a violation has occurred, and any member of the legislature can request such determination. If an agency has violated these provisions, it is ineligible to receive state funding until it has proved to the attorney general that it is in compliance with this section.

Section 8 amends K.S.A. 2007 Supp. 8-240 and section 9 amends K.S.A. 2007 Supp. 8-1324. These amendments require the division of motor vehicles to require persons applying for driver's license or an identification card who provides proof that they are a citizen of the United States to sign an affidavit stating: "I hereby declare that I am a citizen of the United States. I understand that falsely declaring United States citizenship is a federal crime under 18 U.S.C. 1015(e); and I understand that swearing falsely on an affidavit is a crime pursuant to K.S.A. 8-261a, and amendments thereto." Additionally, these sections state that no driver's license or identification card shall be issued to any

alien until the alien has been verified by the United States Department of Homeland Security to be lawfully present in the United States, through the systematic alien verification for entitlements program.

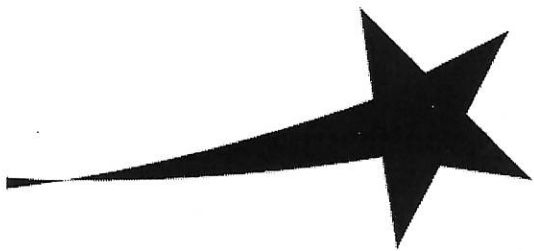
Section 10 amends K.S.A. 2007 Supp. 79-32,120 and section 11 amends K.S.A. 2007 Supp. 79-32,138. These are conforming amendments to implement the tax policies in new section 3.

New section 12 provides that the provisions of the act are severable. The effective date of this act is upon publication in the statute book.



KANSAS
DEPARTMENT OF COMMERCE

David D. Kerr, Secretary



Workforce Needs of Kansas Employers
Presented by Rae Anne Davis

to the

Senate Committee on Federal and State Affairs

February 26, 2008

For more information on this topic contact:

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Sen Fed & State

Attachment 5
2-26-08

Good morning Chairman Brungardt and members of the Senate Committee on Federal and State Affairs. My name is Rae Anne Davis, Deputy Secretary for the Workforce Services Division of the Kansas Department of Commerce. The Department of Commerce was asked to provide information today on the general workforce needs of Kansas businesses. The state's overall unemployment rate continues to hover around four percent, generally considered full employment. However, one quarter of all counties have an unemployment rate at or below three percent. This indicates a labor force shortage. All but two of those 26 counties are in the western half of the state. Labor shortages are a very real issue for Kansas businesses and communities. In terms of economic development activities and the recruitment and retention of businesses to the state, the very first question asked is regarding the availability of a workforce for the jobs that would be created. The shortage of workers is of obvious concern.

The official job vacancy data represents those positions for which employers are actively recruiting. While Kansas is seeing continued job growth in the manufacturing industry, many of the employers with whom we work tell us that they would add additional jobs to the Kansas economy by opening new lines of business or adding additional shifts if it were not for a shortage of available labor. This information is not reflected in available labor market data. While it is difficult to provide concrete data, the following represents a sampling of the significance of the labor shortage Kansas employers are facing.

- Increased demand for business and military aircraft has created the need for 8,700 more workers in a six-county area surrounding Wichita. Over a quarter of the aviation manufacturing workforce is eligible for retirement in 2008, and 40 percent over the next five years. With continued industry growth predicted, aviation companies expect to need an additional 1,000 trained workers each year for the next 10 years.
- Ellis county reports a need for 2,000 additional workers to fill current jobs.
- Ford county reports a need for 1,500 new workers.
- In Southeast Kansas, we are currently working with 13 companies who are creating a total of 1600 jobs for which they are currently or will be recruiting. These projects range in size from 10 to 600 jobs.
- The Amazon.com distribution center in Coffeyville is struggling to find employees. At one time they were paying commute costs to bus in workers from Missouri and Oklahoma.
- Edenspace in Junction City is struggling to fill scientist positions and a total of 30 are currently needed. They report being very frustrated with their ability to recruit workers. Other bioscience companies in the area are also struggling to find workers. Nanoscale in Manhattan needs ten chemical engineers and technicians

and Ventria is short six 6 technical engineering positions including 3 bioscience processors.

- Call centers such as Altell in Manhattan and Capgemini in Junction City are short of workers; 150 and 200 respectively.
- There is an ongoing need for welders and fabricators across the state. Caterpillar Work Tools in Wamego needs 35 welders and is unable to expand because of the labor shortage. Topeka Metal Specialties needs 15 welders/fabricators and LB Steel in Topeka needs 110 welders/fabricators. Hawker Beechcraft in Salina is looking for 50 sheet metal workers and 80 assemblers. EMS, a metal fabrication company in Meriden is short 20 employees. R Tech Tool in Wamego needs 15 machinists. Farrar and Abbot Workholding Products in Manhattan need 10 machinists and CNC operators each.
- Other manufacturing companies are short workers as well. UPU, a netting manufacturer in Junction City, is 20 employees short and is struggling to fulfill their commitment to city for their economic development dollars/jobs created because they cannot find workers. They also report to us that they have additional orders they are not able to fulfill because of the labor shortage. Florence, Inc. in Manhattan needs 10 assemblers and 3 welders. Door manufacturers and cabinet manufacturers in Sabetha and Seneca has a chronic labor shortage of around 35 positions. Berry Plastics in Lawrence is struggling to find an additional 50 production workers due to a recent expansion.
- The food production industry is also looking to expand its workforce. DelMonte Pet Products in Topeka projects a need for 200 new warehouse positions by Fall 2008. Tony's Pizza in Salina needs at least 50 production workers. Johnsonville in Holton is permanently recruiting just to fill existing positions. Frito Lay in Topeka has recently added 105 jobs and management is hoping to add an additional line and 75 more employees.
- School districts are advertising for math, science, and special education teachers. Junction City is recruiting teachers from the Philippines.
- Kansas has an ongoing need for workers in the health care industry. A search of the **KANSASWORKS.com** job matching website returns 128 positions with the keyword "nurse" in 100 miles surrounding Hays. In Wichita the same search produced 554 postings.

These examples are simply intended to provide the requested information about the existing workforce shortage in Kansas. I would be happy to answer any questions you may have about this.

Briefing on the Kansas Labor Market
Senate Federal and State Affairs Committee
Jim Garner, Secretary
Kansas Department of Labor
26 February 2008

Chairman Brungardt and Members of the Committee:

Thank you for inviting me to share information today regarding the Kansas labor force, the population trends in the state and immigration in the state. I hope this information is helpful to you.

Labor Force

The labor force is made up of all the people age 16 and over who are in the labor market. The labor force participation rate indicates the percentage of those people who are in the labor market. Considering both the labor force participation rate and the unemployment rate in Kansas during recent years, it is evident that Kansas has tighter labor market conditions as compared to the nation.

Kansas' labor force participation rate stood at approximately 71 percent in 2007, compared to 66 percent nationwide. The unemployment rate in Kansas in December 2007 was 4.0 percent, compared to 4.8 percent nationwide. This indicates that Kansas employers may have difficulty recruiting employees and meeting further demands for workers.

According to the U.S. Census Bureau, the Kansas population is projected to grow to approximately 2,890,600 by 2020, a gain of 202,100 from 2000. A majority of this gain (123,700) is expected to come from individuals 65 years and older. This age group has a much lower labor force participation rate (approximately 20%) compared to the overall participation rate of approximately 71 percent. This means that much of the future labor force needs will have to rely upon the slower growing segment of the population (18-64). This may further tighten the labor market in the state.

Population

The state added 71,128 people for a 2.64 percent population gain from July 2000 to July 2006, according to U.S. Census Bureau estimates. The metropolitan areas of the state (Kansas City, Lawrence, Topeka and Wichita) grew by 104,815 people, or a 6.39 percent increase, over the same time period. The population in non-metropolitan counties fell by 33,687, or a 3.20 percent decline, during that time.

Of the 88 counties considered to be in the “non-metropolitan areas” only five counties (Chase, Ford, Pottawatomie, Saline and Seward) reported an increase in population. While the metro areas of the state have grown, the western and southeastern areas have experienced an overall population decline.

Immigration

The Kansas Department of Labor doesn't compile information on the number of immigrants, either legal or undocumented, in the state or in the workforce.

However, the methodology used by the Pew Hispanic Center is as statistically and academically rigorous as possible when attempting to estimate the number of undocumented workers in the U.S.

According to a study by the Pew Hispanic Center, there are approximately 40,000 to 70,000 undocumented migrants in the State of Kansas. Of these, the national average shows the majority was from Mexico (56%) and there are more adult males (49%) than adult females (35%), with children accounting for the rest.

Nationwide, the Pew Center estimates that 4.9 percent of the nation's workforce is comprised of undocumented workers, with their employment concentrated more than average in farming, cleaning, construction and food preparation occupations. In Kansas, somewhere between 2 and 4 percent of the workforce may be comprised of undocumented migrants.

Conclusion

I hope this information is helpful as you consider the issues before the committee. I will be happy to stand for any questions you may have about the information I have provided.