

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 March 12, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Others attending:

See attached list.

Final Action:

SB 458 - Immigration reform.

A balloon was provided by staff. (Attachment 1)

Senator Vratil provided the committee with three proposed balloon amendments to the bill. The first handout was an overview of the proposed amendments. (Attachment 2) The proposed amendments are:

Amendment No. 1

1. Section 1 - definitions, appropriate definitions are retained and unnecessary definitions are deleted
2. Sections 2, 3, and 4 are deleted
3. Section 5 - clarifies that an alien who is not lawfully present in the United States is not eligible to receive any state or local public benefits. The term "public benefit" is defined. It does not include reduced fees or tuition provided under current law
4. Section 6 - requires all state officials, agencies, and personnel to fully comply with and support the enforcement of federal law prohibiting the entry into, presence, or residence in the United States of aliens in violation of federal immigration law
5. Sections 8, 9, 10, and 11 are deleted
6. Section 12 contains standard severability provisions
7. New Section 5 - creates a new crime of "employment identity fraud." Employment in identity fraud is willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment in Kansas. Employment identity fraud is a severity level 8, non-person felony. (Attachment 3)
8. New Section 6 - creates the crime of "coercing employment." Coercing employment is labor or services that are performed or provided by another person and that are obtained or maintained through various illicit activities listed in the amendment. Coercing employment is a severity level 9, person felony
9. New Section 7 - provides that, if a person's presence in the United States is a violation of federal immigration laws and that person commits a crime in Kansas, the person's sentence is not subject to a suspended sentence, conditional release, community service, or probation
10. New Section 8 - amends the human trafficking statute to prohibit knowingly transporting or assisting in the transporting of any person into the State of Kansas who is not lawfully present in the United States.

The legislative intent is not intended for the "Good Samaritan" who comes across a stranded motorist in Oklahoma and takes them across the border to get their car fixed or to neighbors who car pool from Oklahoma to Kansas and the neighbor doesn't know that one of the car pool buddies is a illegal immigrant. The crime must be committed knowingly.

11. Section 12 - requires a person convicted of aggravated human trafficking to register as an offender for the remainder of the person's lifetime
12. Section 14 - includes forfeiture of assets provisions. The assets of a person may be forfeited if that

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person is present in the United States in violation of federal immigration laws and commits any felony. Human trafficking would also subject a person to forfeiture of assets.

Amendment No. 2

13. This amendment makes it a civil offense for a business entity to knowingly engage in a pattern or practice of hiring, recruiting, or referring for a fee for employment any unauthorized alien. The Attorney General would be authorized to bring a civil suit to enforce this provision. However, no suit would be allowed against a business entity that participates in the federal E-verify system and such system raises no concerns about the prospective employee. Additionally, a business entity would have an affirmative defense if the business entity properly completed an I-9 form as required by federal law. If a business entity is determined to have violated these provisions, the district court could issue a permanent injunction against further violation. Contempt of court is the remedy for violating an injunction. (Attachment 4)

Amendment No. 3

14. The amendment establishes an "Illegal Immigration Enforcement Division" within the Office of the Attorney General. That enforcement division will be responsible for the investigation and enforcement of criminal and civil prohibitions established under this bill, including existing criminal statutes relevant to unauthorized aliens. (Attachment 5)

Senator Vratil moved SB 458 be amended in the manner as just described in Amendment No. 1. Senator Reitz seconded the motion.

The chairman opened the meeting for discussion of the amendment. The committee asked if hearings were held on certain new sections of the proposed amendment? The answer was not in the Senate.

Senator Barnett objected to the large balloon amendment and would offer a substitute motion to pass the bill out of committee without any changes. The Chairman ruled that the substitute motion was not in order as the amendment was attached to the original bill.

The committee asked for clarification on in-state tuition that was passed in 2007, eligibility requirements, and benefits being paid to illegal aliens. The bill did not change the requirement for in-state tuition for high school students who have attended at least three years of high school in Kansas and met the criteria stated in the legislation. Candy Shively, SRS, stated that the state system is used for the entitlement programs and will reflect if there is a problem with the eligibility requirement. The benefits are not being paid to anyone who is not eligible.

Senator Vratil moved the Amendment No. 1. The motion carried. Senator Barnett and Senator Ostmeier recorded as voting no on Amendment No. 1.

Senator Vratil moved to adopt Amendment No. 2. Senator Lynn seconded the motion. The motion carried.

Senator Vratil moved to adopt Amendment No. 3. Senator Reitz seconded the motion.

Senator Barnett requested a fiscal note on the amendment. The Chairman pointed out that fiscal notes are provided on new bills and can be requested after a bill is amended and has passed one chamber, working on amendments does not require fiscal notes.

The committee asked if the Department of Labor might be more in tune with enforcement of Amendment No. 3, and Senator Vratil stated that in drafting the amendment that the Attorney General's office is better equipped for the enforcement part of the amendment.

The motion carried for Amendment No. 3. Senator Barnett recorded as voting no on Amendment No. 3.

Senator Francisco moved an amendment that would allow photo first by increasing the photo fee to \$12.00. Senator Reitz seconded the motion. (Attachment 6)

The Chairman opened the meeting for discussion on the amendment. Carmen Aldritt explained to the

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MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 12, 2008 in Room 526-S of the Capitol.

committee the type of identification required for a drivers license and that the documents would be scanned in for permanent record keeping.

Senator Brownlee requested a substitute motion to move as a separate bill. Senator Ostmeyer seconded the motion. The motion carried for the amendment to become a Bill Introduction.

Senator Brownlee requested that **SB 458** be moved as a substitute bill.

Senator Vratil moved that **Substitute for SB 458** as amended be favorably recommended to the Senate. Senator Brownlee seconded the motion. The motion carried.

Senator Barnett and Senator Ostmeyer recorded as voting no on the Substitute Bill.

The meeting was adjourned at 11:35 am. The next scheduled meeting is March 13, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 3-12-08

NAME	REPRESENTING
LA Med	LITTLE BOYS RELATIONS
Beatrice Juvoy	Ks Catholic Conference
S. Theresa Banzett	" " "
Peggy Palmer	State Senator
Ed Hayes	MCDC
Richard D. Fry	Citizen
Tom Stoffers	CITIZEN MCDC
PAUL PRIGENER	CITIZENS AGAINST ILLEGAL IMMIGRATION TOLEKA
Kent Eckles	O.P. Chamber of Commerce
Mary Weathers	SRS
Lizze Bernhart	KDOZ
Dawn H	SRS
Don Lowe	SRS
Cindy Norton	SRS
Wanda Bross	Students Helping Immigration Policy
B. Gajelic VA 5862	"SHIP"
Karen Brokerman	SRS
Candy Shively	SRS
Dave Deyra 14	KIOGA
Gait Purinton-Day	KHP
Gayle Shaw	KACCT
Christy Caldwell	Topeka Chamber of Comm
Duane Simpson	KEFH-KRKA
Teronica Hookinon	Sen. Huelkamp Intern
Crystal V. Shami Ken S.	KAAAC

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-12-08

NAME	REPRESENTING
Angie Trowbridge	Leavenworth Lansing Leadership Court Appointed Special Advocates
Ed KLUMPP	KACP & RPOA
DAN MORGAN	Builders' Assn.
DAVE ZOELLNER	Southern LEAV, Co. LEADERSHIP
JAMES T Smith	Southern LV Co Leadership
MARK DE MANVILLE	LEAVENWORTH, KS LLLDC
Rm Seher	Fair Law Firm
JEFF GUARDINO	KS CHAMBER
Ellie Devine	Ks. Lincoln Ave.
Sandy Jacquot	L K M
Cynthe Tronster	KOPE
Tom Palazzo	Area of KS
ERIK SARTORINS	City of Overland Park
SEAN MILLER	CAPITOL STRATEGIES
Eric Montgomery	Sen. Derek Schmidt
CARMEN ALDRITT	KDOR
Teeey Mitchell	KDOR
Ted Smith	KDOR
Bill Nichols	MCDC
Phil Janning	Sen. ZB
Tim Kuehnapf	Senator

Proposed Amendment

Prepared by the Office of the Revisor of Statutes
March 6, 2008

Session of 2008

SENATE BILL No. 458

By Senators Palmer, Barnett, Huelskamp, Journey and Ostmeyer

1-22

9 AN ACT enacting the Kansas ~~illegal immigration relief~~ act; amending
10 K.S.A. ~~2007 Supp. 8-240, 8-1324, 79-32,120 and 79-32,138 and re-~~
11 ~~pealing the existing sections; also repealing K.S.A. 2007 Supp. 76-731a.~~
12

immigration enforcement and reform

21-3446, 21-3447, 21-4643, 22-4902 and 22-4906 and K.S.A.
2007 Supp. 38-2361, 60-4104, 75-451, 75-452 and 75-453 and
repealing the existing sections

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

14 New Section 1. As used in the Kansas ~~illegal immigration relief~~ act:

immigration enforcement and reform

15 (a) "Alien" means any person who is not a citizen or national of the
16 United States, as described in Title 8, Section 1101 of the United States
17 Code, et seq., and amendments thereto.

18 (b) ~~"Law enforcement officer" means any city, county and state police~~
19 ~~officers, highway patrol, county sheriff and any other law enforcement~~
20 ~~officers in the state.~~

21 (c) ~~"Employee" has the meaning ascribed thereto in K.S.A. 44-313,~~
22 ~~and amendments thereto.~~

(b)

23 ~~(d) "Business entity" means any person or group of persons perform-~~
24 ~~ing or engaging in any activity, enterprise, profession or occupation for~~
25 ~~gain, benefit, advantage or livelihood, whether for profit or not-for-profit.~~
26 ~~"Business entity" shall not include an individual employing casual do-~~
27 ~~mestic labor. "Business entity" shall include, but not be limited to:~~

By striking all in lines 28 through 43

28 ~~(1) Self employed individuals, business entities filing articles of in-~~
29 ~~corporation pursuant to article 60 of chapter 17 of the Kansas Statutes~~
30 ~~Annotated, and amendments thereto; a partnership pursuant to chapter~~
31 ~~56a of the Kansas Statutes Annotated, and amendments thereto; a limited~~
32 ~~partnership pursuant to article 1a of chapter 56 of the Kansas Statutes~~
33 ~~Annotated, and amendments thereto; a limited liability company pursuant~~
34 ~~to article 76 of chapter 17 of the Kansas Statutes Annotated, and amend-~~
35 ~~ments thereto; a foreign corporation, a foreign limited partnership or a~~
36 ~~foreign limited liability company authorized to transact business in this~~
37 ~~state; a business trust pursuant to article 20 of chapter 17 of the Kansas~~
38 ~~Statutes Annotated, and amendments thereto; and any business entity~~
39 ~~that registers with the secretary of state.~~

40 (2) Any business entity that possesses a business license, permit, cer-
41 tificate, approval, registration, charter or similar form of authorization
42 issued by the state, any business entity that is exempt by law from ob-
43 taining such a business license, and any business entity that is operating

1 ~~unlawfully without such a business license.~~

2 ~~(c) "Identification document" has the meaning ascribed thereto in~~
3 ~~K.S.A 21-3830, and amendments thereto.~~

4 ~~(f) "Public employer" means every department, agency or instru-~~
5 ~~mentality of the state or a political subdivision of the state.~~

6 ~~(g) "Unauthorized alien" means an alien who is not authorized to~~ (c)
7 ~~work in the United States, as defined in 8 U.S.C. 1324a(h)(3).~~

8 ~~(h) "E-verify" means the electronic verification of employment au-~~ (d)
9 ~~thorization program of the illegal immigration reform and immigrant re-~~
10 ~~sponsibility act of 1996, P.L. 104-208, division C, section 403(a); 8 U.S.C.~~
11 ~~1324(a), and operated by the United States department of homeland se-~~
12 ~~curity, or its successor program.~~

13 ~~(i) "Public employer" means any state agency, department, board or~~
14 ~~commission or any municipality, as defined in K.S.A. 75-1117, and~~
15 ~~amendments thereto, that employs one or more employees.~~

By striking all in lines 13 through 43

16 New Sec. 2. (a) It is unlawful for a business entity to knowingly hire,
17 recruit or refer for a fee for employment in the state of Kansas an unau-
18 thorized alien.

19 (b) Every business entity within the state of Kansas that employs one
20 or more employees shall register with and utilize e-verify to verify the
21 employment authorization of all new employees.

22 (c) All business entities shall be in compliance with this section on
23 and after January 1, 2009. The business entity shall retain all documen-
24 tation received in connection with its participation in e-verify that verifies
25 the employment authorization of every employee verified through e-ver-
26 ify for at least three years after the termination of the employment of the
27 employee. This documentation shall be provided to the department of
28 revenue upon request.

29 (d) On and after January 1, 2009, public employers:

30 (1) Shall register with and utilize e-verify to verify the employment
31 authorization of all new employees; and

32 (2) shall not enter into a contract for the performance of services
33 within this state unless the contractor is registered with and utilizing e-
34 verify to verify the employment authorization of all new employees under
35 the contractors employment. The provision in this paragraph shall not
36 apply to any contracts entered into prior to January 1, 2009, even though
37 such contracts may involve the performance of labor within this state after
38 January 1, 2009.

39 (e) The provisions of this section may be enforced in the courts of
40 the state of Kansas by any district attorney, county attorney or by the
41 attorney general.

42 (f) On a finding of the first violation of this section by a business
43 entity, the court shall order the suspension of all licenses that are held by

By striking all in lines 1 through 43

1 ~~such business entity for not less than 10 days and not more than 30 days.~~
2 (g) On a finding of the second violation of this section by a business
3 entity, the court shall order the suspension of all licenses that are held by
4 such business entity for not less than 90 days and not more than one year.
5 (h) On a finding of the third violation of this section by a business
6 entity, the court shall order the permanent suspension of all licenses that
7 are held by such business entity as well as the revocation of the business
8 entity's registration as a corporation in the state of Kansas, if applicable.
9 (i) In enforcing the provisions of this section, no state, county or local
10 official shall attempt to independently determine whether an individual
11 is an unauthorized alien or an alien not lawfully present in the United
12 States. Such determination shall only be made by verifying the alien's
13 immigration status with the federal government, pursuant to 8 U.S.C.
14 1373(c).
15 (j) For the purposes of this section, when making a determination of
16 whether an employee is an unauthorized alien, a court shall only consider
17 the federal government's determination pursuant to 8 U.S.C. 1373(c).
18 The court shall take judicial notice of any verification of the immigration
19 status previously provided by the federal government. The court may,
20 and at the request of a party shall, request the federal government to
21 provide, in automated, documentary or testimonial form, a new verifi-
22 cation of the immigration status of the employee pursuant to 8 U.S.C.
23 1373(c). The most recent determination of the immigration status of an
24 employee by the federal government shall create a rebuttable presump-
25 tion as to the employee's immigration status.
26 (k) For the purposes of this section, a business entity that has compli-
27 ed in good faith with this section through registration and participation
28 in e-verify to confirm the employment authorization of any employee in
29 question shall create a rebuttable presumption that the employer did not
30 knowingly employ an unauthorized alien.
31 (l) For the purposes of this section, where a business entity has con-
32 tracted for the services of an independent contractor, no employment
33 relationship exists between the business entity and the independent con-
34 tractor or its employees.
35 New Sec. 3. (a) No payment or compensation or other remuneration,
36 including, but not limited to, wages, salaries, bonuses, benefits, in-kind
37 exchanges, expenses or any other economic benefit, paid to an unauthor-
38 ized alien employee, as defined in section 1, and amendments thereto,
39 may be claimed and allowed as a deductible business expense for state
40 income tax purposes. This section shall apply whether or not an internal
41 revenue service form 1099 or form W-2 is issued in conjunction with such
42 payments, compensation or other remuneration.
43 (b) ~~No payment or compensation or other remuneration, including,~~

By striking all in lines 1 through 43

1 ~~but not limited to, wages, salaries, bonuses, benefits, in-kind exchanges,~~
2 ~~expenses or any other economic benefit, paid to an independent contrac-~~
3 ~~tor may be claimed and allowed as a deductible business expense for state~~
4 ~~income tax purposes if such independent contractor is not registered with~~
5 ~~and utilizing e-verify to verify the employment authorization of all new~~
6 ~~employees under such contractor's employment.~~

7 (c) This section shall not apply to any business which is exempt from
8 compliance with federal employment verification procedures under fed-
9 eral law which makes the employment of unauthorized aliens unlawful.

10 (d) This section shall not apply to any individual hired by the taxpayer
11 prior to January 1, 2009.

12 (e) All employers shall submit an affidavit to the department of rev-
13 enue accompanying the annual tax return required under state law. This
14 affidavit shall be signed by the employer under penalty of perjury and
15 shall specifically state the following:

16 (1) Whether the employer utilized a business expense or business loss
17 deduction in determining federal adjusted gross income;

18 (2) whether the employer employed any employees or independent
19 contractors for the tax year in question and the number of such employees
20 or independent contractors;

21 (3) whether the employer is enrolled in and is actively participating
22 in e-verify;

23 (4) whether the employer has used e-verify to confirm the employ-
24 ment eligibility of every employee hired on or after January 1, 2009;

25 (5) whether the employer has confirmed that any independent con-
26 tractor employed by the employer is an independent contractor who is
27 registered with and utilizing e-verify to verify the employment authori-
28 zation of all new employees; and

29 (6) the employer's identification number signifying the employer's
30 enrollment in e-verify.

31 (f) The department of revenue may audit any employer who:

32 (1) Fails to timely submit the affidavit required under this section;
33 and

34 (2) the department has probable cause to believe is not complying
35 with this section.

36 (g) If the department of revenue determines that the employer has
37 knowingly made material misrepresentations of fact regarding informa-
38 tion contained in the affidavit required under this section, the employer
39 shall be required to add back business deductions taken in determining
40 such employer's adjusted gross income used to calculate the employer's
41 state tax liability, to the extent such deductions constitute wages or re-
42 munerations paid to employees whose employment authorization was not
43 verified using e-verify.

1 ~~New Sec. 4. (a) Employment identity fraud is willfully presenting to~~
2 ~~an employer false or misleading identification documents for the purpose~~
3 ~~of obtaining employment in the state of Kansas.~~

By striking all in lines 1 through 6

4 ~~(b) Employment identity fraud is a severity level 8, nonperson felony.~~

5 ~~(c) This section shall be part of and supplemental to the Kansas crim-~~
6 ~~inal code.~~

2.

7 New Sec. 5. (a) An alien who is not lawfully present in the United
8 States shall not be eligible to receive any state or local public benefit from
9 any state, county or local government entity in the state of Kansas, except
10 for state or local public benefits that are required to be offered by 8 U.S.C.
11 1621(b).

federal law

12 (b) For the purposes of this section, "public benefit" includes: Any
13 grant, contract, loan or license provided by an agency of state or local
14 government; or any retirement, welfare, health, disability, housing, post-
15 secondary education, food assistance, or unemployment benefit under
16 which payments, assistance, credits, reduced rates, reduced fees or resi-
17 dent tuition rates are provided or offered.

or

"Public benefit" shall not include reduced fees or tuition provided under K.S.A. 2007 Supp. 76-731a, and amendments thereto.

18 ~~(c) In addition to providing proof of other eligibility requirements, at~~
19 ~~the time of application for any public benefit, an applicant who is 18 years~~
20 ~~of age or older shall first establish that the applicant is a citizen of the~~
21 ~~United States, an alien entitled to lawful permanent residence in the~~
22 ~~United States or is an alien lawfully present in the United States.~~

By striking all in lines 18 through 32

23 (d) An applicant who is an alien shall not receive any public benefit
24 unless the alien's lawful presence in the United States is first verified by
25 the federal government, pursuant to 8 U.S.C. 1373(c). State, county and
26 local agencies administering public benefits shall cooperate with the
27 United States department of homeland security in achieving verification
28 of aliens' lawful presence in the United States, and shall seek a memo-
29 randum of understanding with the United States department of homeland
30 security to participate in the systematic alien verification for entitlements
31 program operated by the United States department of homeland security
32 in order to meet the requirements of this section.

3.

33 New Sec. 6. (a) All state officials, agencies and personnel shall fully
34 comply with, and, to the full extent permitted by law, support the en-
35 forcement of federal law prohibiting the entry into, presence or residence
36 in the United States of aliens in violation of federal immigration law.

By striking all in lines 37 through 43

37 ~~(b) All law enforcement officers shall inquire into the citizenship and~~
38 ~~immigration status of any person arrested for a violation of any state law~~
39 ~~or municipal ordinance, regardless of the person's national origin, eth-~~
40 ~~nicity or race. In all such cases where a person indicates that such person~~
41 ~~is not a citizen or national of the United States, the law enforcement~~
42 ~~officer shall verify with the federal government whether the alien is law-~~
43 ~~fully or unlawfully present in the United States, pursuant to 8 U.S.C.~~

1 ~~1373(c). This verification shall occur through communication with the~~
 2 ~~law enforcement support center, operated by the bureau of immigration~~
 3 ~~and customs enforcement of the United States department of homeland~~
 4 ~~security. If the alien is verified to be unlawfully present in the United~~
 5 ~~States, the law enforcement officer shall cooperate with any request by~~
 6 ~~federal immigration authorities to detain the alien or transfer the alien to~~
 7 ~~the custody of the federal government.~~

By striking all in lines 1 through 23

8 (c) Pursuant to 8 U.S.C. 1373 and 8 U.S.C. 1644, no official or agent
 9 of a state, county or city law enforcement agency may be prohibited or
 10 in any way restricted from sending, receiving or maintaining, information
 11 regarding the immigration status, lawful or unlawful, of any individual, or
 12 exchanging such information with any other federal, state or local gov-
 13 ernment entity. No state, county or city law enforcement agency may by
 14 ordinance, resolution, official policy or informal policy, prevent, restrict
 15 or discourage its officers from asking individuals their citizenship or im-
 16 migration status.

17 (d) Any state, county or city law enforcement agency shall be deemed
 18 to be in violation of this section if the attorney general determines that
 19 such a violation has occurred. Any member of the Kansas legislature may
 20 request such a determination by the attorney general. Any agency found
 21 to be in violation of this section shall be ineligible to receive any state
 22 ~~funding until such agency can prove to the attorney general that the~~
 23 ~~agency is in compliance with this section.~~

4.

3

24 New Sec. 7. Sections 1 through 6, and amendments thereto, shall be
 25 known and maybe cited as the Kansas illegal immigration relief act.

immigration enforcement and reform

26 ~~Sec. 8. K.S.A. 2007 Supp. 8-240 is hereby amended to read as fol-~~
 27 ~~lows: 8-240. (a) Every application for an instruction permit shall be made~~
 28 ~~upon a form furnished by the division of vehicles and accompanied by a~~
 29 ~~fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every~~
 30 ~~other application shall be made upon a form furnished by the division~~
 31 ~~and accompanied by an examination fee of \$3, unless a different fee is~~
 32 ~~required by K.S.A. 8-241, and amendments thereto, and by the proper~~
 33 ~~fee for the license for which the application is made. If the applicant is~~
 34 ~~not required to take an examination the examination fee shall not be~~
 35 ~~required. The examination shall consist of three tests, as follows: (1) Vi-~~
 36 ~~sion; (2) written; and (3) driving. If the applicant fails the vision test, the~~
 37 ~~applicant may have correction of vision made and take the vision test again~~
 38 ~~without any additional fee. If an applicant fails the written test, the ap-~~
 39 ~~plicant may take such test again upon the payment of an additional ex-~~
 40 ~~amination fee of \$1.50. If an applicant fails the driving test, the applicant~~
 41 ~~may take such test again upon the payment of an additional examination~~
 42 ~~fee of \$1.50. If an applicant fails to pass all three of the tests within a~~
 43 ~~period of six months from the date of original application and desires to~~

By striking all in lines 26 through 43

By striking all in lines 1 through 43

1 ~~take additional tests, the applicant shall file an application for reexami-~~
2 ~~nation upon a form furnished by the division, which shall be accompanied~~
3 ~~by a reexamination fee of \$3, except that any applicant who fails to pass~~
4 ~~the written or driving portion of an examination four times within a six-~~
5 ~~month period, shall be required to wait a period of six months from the~~
6 ~~date of the last failed examination before additional examinations may be~~
7 ~~given. Upon the filing of such application and the payment of such re-~~
8 ~~examination fee, the applicant shall be entitled to reexamination in like~~
9 ~~manner and subject to the additional fees and time limitation as provided~~
10 ~~for examination on an original application. If the applicant passes the~~
11 ~~reexamination, the applicant shall be issued the classified driver's license~~
12 ~~for which the applicant originally applied, which license shall be issued~~
13 ~~to expire as if the applicant had passed the original examination.~~

14 (b) (1) ~~For the purposes of obtaining any driver's license or instruc-~~
15 ~~tion permit, an applicant shall submit, with the application, proof of age~~
16 ~~and proof of identity as the division may require. The applicant also shall~~
17 ~~provide a photo identity document, except that a non-photo identity doc-~~
18 ~~ument is acceptable if it includes both the applicant's full legal name and~~
19 ~~date of birth, and documentation showing the applicant's name, the ap-~~
20 ~~plicant's address of principal residence and the applicant's social security~~
21 ~~number. The applicant's social security number shall remain confidential~~
22 ~~and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012,~~
23 ~~and amendments thereto. If the applicant does not have a social security~~
24 ~~number the applicant shall provide proof of lawful presence and Kansas~~
25 ~~residency. The division shall assign a distinguishing number to the license~~
26 ~~or permit.~~

27 (2) ~~The division shall not issue any driver's license or instruction per-~~
28 ~~mit to any person who fails to provide proof that the person is lawfully~~
29 ~~present in the United States. Before issuing a driver's license or instruc-~~
30 ~~tion permit to a person, the division shall require valid documentary ev-~~
31 ~~idence that the applicant: (A) Is a citizen or national of the United States;~~
32 ~~(B) is an alien lawfully admitted for permanent or temporary residence~~
33 ~~in the United States; (C) has conditional permanent resident status in the~~
34 ~~United States; (D) has an approved application for asylum in the United~~
35 ~~States or has entered into the United States in refugee status; (E) has a~~
36 ~~valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry~~
37 ~~into the United States; (F) has a pending application for asylum in the~~
38 ~~United States; (G) has a pending or approved application for temporary~~
39 ~~protected status in the United States; (H) has approved deferred action~~
40 ~~status; or (I) has a pending application for adjustment of status to that of~~
41 ~~an alien lawfully admitted for permanent residence in the United States~~
42 ~~or conditional permanent resident status in the United States.~~

43 (3) ~~If an applicant provides evidence of lawful presence set out in~~

By striking all in lines 1 through 43

1 ~~subsections (b)(2)(E) through (2)(I), or is an alien lawfully admitted for~~
2 ~~temporary residence under subsection (b)(2)(B), the division may only~~
3 ~~issue a driver's license to the person under the following conditions: (A)~~
4 ~~A driver's license issued pursuant to this subparagraph shall be valid only~~
5 ~~during the period of time of the applicant's authorized stay in the United~~
6 ~~States or, if there is no definite end to the period of authorized stay, a~~
7 ~~period of one year; (B) a drivers' license issued pursuant to this subpar-~~
8 ~~agraph shall clearly indicate that it is temporary and shall state the date~~
9 ~~on which it expires; (C) no driver's license issued pursuant to this sub-~~
10 ~~paragraph shall be for a longer period of time than the time period per-~~
11 ~~mitted by subsection (a) of K.S.A. 8-247, and amendments thereto; and~~
12 ~~(D) a driver's license issued pursuant to this subparagraph may be re-~~
13 ~~newed, subject at the time of renewal, to the same requirements and~~
14 ~~conditions as set out in this subsection (b) for the issuance of the original~~
15 ~~driver's license.~~

16 (4) The division shall not issue any driver's license or instruction per-
17 mit to any person who is not a resident of the state of Kansas, except as
18 provided in K.S.A. 8-2,148, and amendments thereto.

19 (5) The division shall not issue a driver's license to a person holding
20 a driver's license issued by another state without making reasonable ef-
21 forts to confirm that the person is terminating or has terminated the
22 driver's license in the other state.

23 (6) The parent or guardian of an applicant under 16 years of age shall
24 sign the application for any driver's license submitted by such applicant.

25 (c) Every application shall state the full legal name, date of birth,
26 gender and address of principal residence of the applicant, and briefly
27 describe the applicant, and shall state whether the applicant has been
28 licensed as a driver prior to such application, and, if so, when and by what
29 state or country. Such application shall state whether any such license has
30 ever been suspended or revoked, or whether an application has ever been
31 refused, and, if so, the date of and reason for such suspension, revocation
32 or refusal. In addition, applications for commercial drivers' licenses and
33 instruction permits for commercial licenses must include the following:
34 The applicant's social security number; the person's signature; the per-
35 son's colored digital photograph; certifications, including those required
36 by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release
37 driving record information; and, any other information required by the
38 division.

39 (d) When an application is received from a person previously licensed
40 in another jurisdiction, the division shall request a copy of the driver's
41 record from the other jurisdiction. When received, the driver's record
42 shall become a part of the driver's record in this state with the same force
43 and effect as though entered on the driver's record in this state in the

By striking all in lines 1 through 43

1 ~~original instance.~~
2 (e) When the division receives a request for a driver's record from
3 another licensing jurisdiction the record shall be forwarded without
4 charge.
5 (f) A fee shall be charged as follows:
6 (1) For a class C driver's license issued to a person at least 21 years
7 of age, but less than 65 years of age, \$18;
8 (2) for a class C driver's license issued to a person 65 years of age or
9 older, \$12;
10 (3) for a class M driver's license issued to a person at least 21 years
11 of age, but less than 65 years of age, \$12.50;
12 (4) for a class M driver's license issued to a person 65 years of age or
13 older, \$9;
14 (5) for a class A or B driver's license issued to a person who is at least
15 21 years of age, but less than 65 years of age, \$24;
16 (6) for a class A or B driver's license issued to a person 65 years of
17 age or older, \$16;
18 (7) for any class of commercial driver's license issued to a person 21
19 years of age or older, \$18; or
20 (8) for class A, B, C or M, or a farm permit, or any commercial driver's
21 license issued to a person less than 21 years of age, \$20.
22 A fee of \$10 shall be charged for each commercial driver's license
23 endorsement, except air brake endorsements which shall have no charge.
24 A fee of \$3 per year shall be charged for any renewal of a license issued
25 prior to the effective date of this act to a person less than 21 years of age.
26 If one fails to make an original application or renewal application for a
27 driver's license within the time required by law, or fails to make appli-
28 cation within 60 days after becoming a resident of Kansas, a penalty of
29 \$1 shall be added to the fee charged for the driver's license.
30 (g) Any person who possesses an identification card as provided in
31 K.S.A. 8-1324, and amendments thereto, shall surrender such identifi-
32 cation card to the division upon being issued a valid Kansas driver's license
33 or upon reinstatement and return of a valid Kansas driver's license.
34 (h) The division shall require that any person applying for a driver's
35 license submit to a mandatory facial image capture.
36 (i) The director of vehicles may issue a temporary driver's license to
37 an applicant who cannot provide valid documentary evidence as defined
38 by subsection (b)(2), if the applicant provides compelling evidence prov-
39 ing current lawful presence. Any temporary license issued pursuant to
40 this subsection shall be valid for one year.
41 (j) *The division shall require that any person applying for a driver's*
42 *license who provides proof by valid documentary evidence that the person*
43 *is a citizen of the United States sign an affidavit stating the following: "I*

1 ~~hereby declare that I am a citizen of the United States. I understand that~~
 2 ~~falsely declaring United States citizenship is a federal crime under 18~~
 3 ~~U.S.C. 1015(e); and I understand that swearing falsely on an affidavit is~~
 4 ~~a crime pursuant to K.S.A. 8-261a, and amendments thereto.”~~

By striking all in lines 1 through 43

5 (k) ~~No driver’s license shall be issued to any alien until the alien has~~
 6 ~~been verified by the United States department of homeland security to be~~
 7 ~~lawfully present in the United States, pursuant to 8 U.S.C. 1373(c). Such~~
 8 ~~verification shall occur through the systematic alien verification for en-~~
 9 ~~titlements program operated by the United States department of home-~~
 10 ~~land security.~~

11 Sec. 9. K.S.A. 2007 Supp. 8-1324 is hereby amended to read as fol-
 12 lows: 8-1324. (a) Any resident who does not hold a current valid Kansas
 13 driver’s license may make application to the division of vehicles and be
 14 issued one identification card.

15 (b) For the purpose of obtaining an identification card, an applicant
 16 shall submit, with the application, proof of age, proof of identity and proof
 17 of lawful presence. An applicant shall submit with the application a photo
 18 identity document, except that a non-photo identity document is accept-
 19 able if it includes both the applicant’s full legal name and date of birth,
 20 and documentation showing the applicant’s name, the applicant’s address
 21 of principal residence and the applicant’s social security account number
 22 The applicant’s social security number shall remain confidential and shall
 23 not be disclosed, except as provided pursuant to K.S.A. 74-2012, and
 24 amendments thereto. If the applicant does not have a social security num-
 25 ber, the applicant shall provide proof of lawful presence and Kansas res-
 26 idency. The division shall assign a distinguishing number to the identifi-
 27 cation card. Before issuing an identification card to a person, the division
 28 shall make reasonable efforts to verify with the issuing agency the issu-
 29 ance, validity and completeness of each document required to be pre-
 30 sented by the applicant to prove age, identity and lawful presence.

31 (c) The division shall not issue an identification card to any person
 32 who fails to provide proof that the person is lawfully present in the United
 33 States. If an applicant provides evidence of lawful presence as set out in
 34 subsections (b)(2)(E) through (2)(I) of K.S.A. 8-240, and amendments
 35 thereto, or is an alien lawfully admitted for temporary residence under
 36 subsection (b)(2)(B) of K.S.A. 8-240, and amendments thereto, the divi-
 37 sion may only issue a temporary identification card to the person under
 38 the following conditions: (A) A temporary identification card issued pur-
 39 suant to this subparagraph shall be valid only during the period of time
 40 of the applicant’s authorized stay in the United States or, if there is no
 41 definite end to the period of authorized stay, a period of one year; (B) a
 42 temporary identification card issued pursuant to this subparagraph shall
 43 clearly indicate that it is temporary and shall state the date upon which

By striking all in lines 1 through 43

1 ~~it expires; (C) no temporary identification card issued pursuant to this~~
2 ~~subparagraph shall be for a longer period of time than the time period~~
3 ~~permitted by K.S.A. 8-1325, and amendments thereto; and (D) a tem-~~
4 ~~porary identification card issued pursuant to this subparagraph may be~~
5 ~~renewed, subject at the time of renewal, to the same requirements and~~
6 ~~conditions set forth in this subsection (c) for the issuance of the original~~
7 ~~temporary identification card.~~
8 ~~(d) The division shall not issue an identification card to any person~~
9 ~~who holds a current valid Kansas driver's license unless such driver's li-~~
10 ~~cence has been physically surrendered pursuant to the provisions of sub-~~
11 ~~section (e) of K.S.A. 8-1002, and amendments thereto.~~
12 ~~(e) The division shall refuse to issue an identification card to a person~~
13 ~~holding a driver's license or identification card issued by another state~~
14 ~~without confirmation that the person is terminating or has terminated the~~
15 ~~license or identification card.~~
16 ~~(f) The parent or guardian of an applicant under 16 years of age shall~~
17 ~~sign the application for an identification card submitted by such applicant.~~
18 ~~(g) The division shall require payment of a fee of \$14 at the time~~
19 ~~application for an identification card is made, except that persons who~~
20 ~~are 65 or more years of age or who are handicapped, as defined in K.S.A.~~
21 ~~8-1,124, and amendments thereto, shall be required to pay a fee of only~~
22 ~~\$10.~~
23 ~~(h) All Kansas identification cards shall have physical security features~~
24 ~~designed to prevent tampering, counterfeiting or duplication for fraud-~~
25 ~~ulent purposes.~~
26 ~~(i) For the purposes of K.S.A. 8-1324 through 8-1328, and amend-~~
27 ~~ments thereto, a person shall be deemed to be a resident of the state if:~~
28 ~~(1) The person owns, leases or rents a place of domicile in this state;~~
29 ~~(2) the person engages in a trade, business or profession in this state;~~
30 ~~(3) the person is registered to vote in this state;~~
31 ~~(4) the person enrolls the person's child in a school in this state; or~~
32 ~~(5) the person registers the person's motor vehicle in this state.~~
33 ~~(j) The division shall require that any person applying for an identi-~~
34 ~~fication card submit to a mandatory facial image capture.~~
35 ~~(k) The director of vehicles may issue a temporary identification card~~
36 ~~to an applicant who cannot provide valid documentary evidence as de-~~
37 ~~fined by subsection (c), if the applicant provides compelling evidence~~
38 ~~proving current lawful presence. Any temporary identification card issued~~
39 ~~pursuant to this subparagraph shall be valid for one year.~~
40 ~~(l) Upon payment of the required fee, the division shall issue to every~~
41 ~~applicant qualifying under the provisions of this act an identification card.~~
42 ~~Such identification card shall bear a distinguishing number assigned to~~
43 ~~the cardholder, the full legal name, date of birth, address of principal~~

By striking all in lines 1 through 43

1 residence, a brief description of the cardholder, a colored digital photo-
2 graph of the cardholder, and a facsimile of the signature of the cardholder.
3 An identification card which does not contain the address of principal
4 residence of the cardholder as required may be issued to persons who
5 are program participants pursuant to K.S.A. 2007 Supp. 75-455, and
6 amendments thereto.

7 (m) The division shall require that any person applying for an iden-
8 tification card who provides proof by valid documentary evidence that
9 the person is a citizen of the United States sign an affidavit stating the
10 following: "I hereby declare that I am a citizen of the United States. I
11 understand that falsely declaring United States citizenship is a federal
12 crime under 18 U.S.C. 1015(e); and I understand that swearing falsely
13 on an affidavit is a crime pursuant to K.S.A. 8-261a, and amendments
14 thereto."

15 (n) No identification card shall be issued to any alien until the alien
16 has been verified by the United States department of homeland security
17 to be lawfully present in the United States, pursuant to 8 U.S.C. 1373(c).
18 Such verification shall occur through the systematic alien verification for
19 entitlements program operated by the United States department of home-
20 land security.

21 Sec. 10. K.S.A. 2007 Supp. 79-32,120 is hereby amended to read as
22 follows: 79-32,120. (a) If federal taxable income of an individual is deter-
23 mined by itemizing deductions from such individual's federal adjusted
24 gross income, such individual may elect to deduct the Kansas itemized
25 deduction in lieu of the Kansas standard deduction. The Kansas itemized
26 deduction of an individual means the total amount of deductions from
27 federal adjusted gross income, other than federal deductions for personal
28 exemptions, as provided in the federal internal revenue code with the
29 modifications specified in this section. *No deduction shall be allowed for*
30 *any payment, compensation or other economic benefit disallowed by sec-*
31 *tion 3, and amendments thereto.*

32 (b) The total amount of deductions from federal adjusted gross in-
33 come shall be reduced by the total amount of income taxes imposed by
34 or paid to this state or any other taxing jurisdiction to the extent that the
35 same are deducted in determining the federal itemized deductions and
36 by the amount of all depreciation deductions claimed for any real or
37 tangible personal property upon which the deduction allowed by K.S.A.
38 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-
39 32,250, 79-32,255 or 79-32,256, and amendments thereto, is or has been
40 claimed.

41 Sec. 11. K.S.A. 2007 Supp. 79-32,138 is hereby amended to read as
42 follows: 79-32,138. (a) Kansas taxable income of a corporation taxable
43 ~~under this act shall be the corporation's federal taxable income for the~~

1 ~~taxable year with the modifications specified in this section.~~

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

5 (ii) The amount of all depreciation deductions claimed for any prop-
6 erty upon which the deduction allowed by K.S.A. 2007 Supp. 79-32,221,
7 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-
8 32,256, and amendments thereto, is claimed.

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

12 (iv) *The amount of the payments, compensation or other economic*
13 *benefit disallowed by section 3, and amendments thereto.*

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

17 (ii) The federal income tax liability for any taxable year commencing
18 prior to December 31, 1971, for which a Kansas return was filed after
19 reduction for all credits thereon, except credits for payments on estimates
20 of federal income tax, credits for gasoline and lubricating oil tax, and for
21 foreign tax credits if, on the Kansas income tax return for such prior year,
22 the federal income tax deduction was computed on the basis of the federal
23 income tax paid in such prior year, rather than as accrued. Notwithstand-
24 ing the foregoing, the deduction for federal income tax liability for any
25 year shall not exceed that portion of the total federal income tax liability
26 for such year which bears the same ratio to the total federal income tax
27 liability for such year as the Kansas taxable income, as computed before
28 any deductions for federal income taxes and after application of subsec-
29 tions (d) and (e) of this section as existing for such year, bears to the
30 federal taxable income for the same year.

31 (iii) An amount for the amortization deduction allowed pursuant to
32 K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-
33 32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

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

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

40 (d) If any corporation derives all of its income from sources within
41 Kansas in any taxable year commencing after December 31, 1979, its
42 Kansas taxable income shall be the sum resulting after application of
43 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas

By striking all in lines 1 through 43

1 ~~taxable income in any such taxable year, after excluding any refunds of~~
 2 ~~federal income tax and before the deduction of federal income taxes pro-~~
 3 ~~vided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271~~
 4 ~~to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund~~
 5 ~~of federal income tax as determined under paragraph (iv) of subsection~~
 6 ~~(b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduc-~~
 7 ~~tion for federal income taxes as provided by subsection (c)(ii) shall be~~
 8 ~~such corporation's Kansas taxable income.~~

9 (e) A corporation may make an election with respect to its first taxable
 10 year commencing after December 31, 1982, whereby no addition modi-
 11 fications as provided for in subsection (b)(ii) of K.S.A. 79-32,138 and
 12 subtraction modifications as provided for in subsection (c)(iii) of K.S.A.
 13 79-32,138, as those subsections existed prior to their amendment by this
 14 ~~act, shall be required to be made for such taxable year.~~

15 New Sec. 12. If any provisions of this act or the application thereof
 16 to any person or circumstances is held invalid, the invalidity shall not
 17 affect other provisions or applications of the act which can be given effect
 18 without the invalid provisions or application, and to this end the provisions
 19 of this act are severable.

20 Sec. 13. ~~K.S.A. 2007 Supp. § 240, § 1324, 76-731a, 70-32,120 and~~
 21 ~~79-32,138 are hereby repealed.~~

22 Sec. 14. This act shall take effect and be in force from and after its
 23 publication in the statute book.

By striking all in lines 1 through 14

following line 14, by inserting:
 Sections 5 through 17 (see attachment
 ball458insert)

And by renumbering the remaining
 sections accordingly

K.S.A. 21-3446, 21-3447, 21-4643, 22-4902 and 22-4906 and
 K.S.A. 2007 Supp. 38-2361, 60-4104, 75-451, 75-452 and
 75-453

**PROPOSED AMENDMENTS TO 2008 SB 458
MARCH 11, 2008**

This memo is intended to outline proposed amendments to 2008 SB 458. The amendments are as follows:

AMENDMENT NO. 1

1. Section 1 consists of definitions. The definitions that are necessary and appropriate are retained. Unnecessary definitions are deleted.
2. Sections 2, 3, and 4 are deleted.
3. Section 5 clarifies that an alien who is not lawfully present in the United States is not eligible to receive any state or local public benefits. The term "public benefit" is defined. It does not include reduced fees or tuition provided under current law.
4. Section 6 requires all state officials, agencies, and personnel to fully comply with and support the enforcement of federal law prohibiting the entry into, presence, or residence in the United States of aliens in violation of federal immigration law.
5. Sections 8, 9, 10, and 11 are deleted.
6. Section 12 contains standard severability provisions.
7. New Section 5 creates a new crime of "employment identity fraud." Employment identity fraud is willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment in Kansas. Employment identity fraud is a severity level 8, non-person felony.
8. New Section 6 creates the crime of "coercing employment." Coercing employment is labor or services that are performed or provided by another person and that are obtained or maintained through various illicit activities listed in the amendment. Coercing employment is a severity level 9, person felony.
9. New Section 7 provides that, if a person's presence in the United States is a violation of federal immigration laws and that person commits a crime in Kansas, the person's sentence is not subject to a suspended sentence, conditional release, community service, or probation.
10. Section 8 amends the human trafficking statute to prohibit knowingly transporting or assisting in the transporting of any person into the State of Kansas who is not lawfully present in the United States.
11. Section 12 requires a person convicted of aggravated human trafficking to register as an offender for the remainder of the person's lifetime.

12. Section 14 includes forfeiture of assets provisions. The assets of a person may be forfeited if that person is present in the United States in violation of federal immigration laws and commits any felony. Human trafficking would also subject a person to forfeiture of assets.

AMENDMENT NO. 2

13. This amendment makes it a civil offense for a business entity to knowingly engage in a pattern or practice of hiring, recruiting, or referring for a fee for employment any unauthorized alien. The Attorney General would be authorized to bring a civil suit to enforce this provision. However, no suit would be allowed against a business entity that participates in the federal E-verify system and such system raises no concerns about the prospective employee. Additionally, a business entity would have an affirmative defense if the business entity properly completed an I-9 form as required by federal law. If a business entity is determined to have violated these provisions, the district court could issue a permanent injunction against further violation. Contempt of court is the remedy for violating an injunction.

AMENDMENT NO. 3

14. The amendment establishes an "Illegal Immigration Enforcement Division" within the Office of the Attorney General. That enforcement division will be responsible for the investigation and enforcement of criminal and civil prohibitions established under this bill, including existing criminal statutes relevant to unauthorized aliens.

New Sec. 5. (a) Employment identity fraud is willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment in the state of Kansas.

(b) Employment identity fraud is a severity level 8, nonperson felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

New Sec. 6. (a) Coercing employment is labor or services that are performed or provided by another person and that are obtained or maintained through any of the following:

(1) Causing or threatening to cause serious physical injury to any person;

(2) physically restraining or threatening to physically restrain another person;

(3) abusing or threatening to abuse the law or legal process;

(4) threatening to withhold food, lodging or clothing; or

(5) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.

(b) Coercing employment is a severity level 9, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

New Sec. 7. (a) The sentence of any person who is convicted of violating any criminal statute in this state shall not be subject to statutory provisions for suspended sentence, conditional release, community service or probation, if such person's presence in the United States is in violation of federal immigration laws.

(b) The provisions of this section shall apply to crimes committed after July 1, 2008.

(c) This section shall be part of and supplemental to the

Kansas criminal code.

Sec. 8. K.S.A. 21-3446 is hereby amended to read as follows:
21-3446. (a) Human trafficking is:

(1) ~~Recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude, or~~ The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;

(2) benefitting financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in ~~subsection (a)~~ paragraph (1) or (3); or

(3) knowingly transporting or assisting in the transporting of any person into this state who is not lawfully present in the United States.

(b) Human trafficking is a severity level 2, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 9. K.S.A. 21-3447 is hereby amended to read as follows:
21-3447. (a) Aggravated human trafficking is:

(1) Human trafficking, as defined in K.S.A. 21-3446, and amendments thereto:

(A) Involving the commission or attempted commission of kidnapping, as defined in K.S.A 21-3420, and amendments thereto;

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(b) Except as provided further, aggravated human trafficking

is a severity level 1, person felony. When the offender is 18 years of age or older, aggravated human trafficking, if the victim is less than 14 years of age, is an off-grid person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 10. K.S.A. 21-4643 is hereby amended to read as follows: 21-4643. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in paragraph (2):

(A) Aggravated human trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto;

(E) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; and

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in paragraphs (A) through (F).

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and

sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to the effective date of this act which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 21-3522, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 21-3522, and amendments thereto.

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years, 40 years or be

sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(d) On or after July 1, 2006, for a first time conviction of an offense listed in paragraph (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the sentencing guidelines act, K. S. A. 21-4701 et seq., and amendments thereto, and no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder. as used in this subsection, mitigating circumstances shall include, but are not limited to, the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.

(3) The victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.

(4) The defendant acted under extreme distress or under the substantial domination of another person.

(5) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

(6) The age of the defendant at the time of the crime.

Sec. 11. K.S.A. 22-4902 is hereby amended to read as follows: 22-4902. As used in this act, unless the context otherwise requires:

(a) "Offender" means: (1) A sex offender as defined in subsection (b);

(2) a violent offender as defined in subsection (d);

(3) a sexually violent predator as defined in subsection (f);

(4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:

(A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;

(B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or

(C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;

(5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto; or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

(6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;

(7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(8) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated human trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance as defined by K.S.A. 65-4159, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by K.S.A. 65-7006, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, and amendments thereto.

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be

counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;

(10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;

(11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or

(12) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to a

sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

(13) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or

(14) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) "Violent offender" includes any person who, after the effective date of this act, is convicted of any of the following crimes:

(1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;

(2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;

(3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;

(4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;

(5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto; or

(6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) "Law enforcement agency having jurisdiction" means the sheriff of the county in which the offender expects to reside upon the offender's discharge, parole or release.

(f) "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.

(g) "Nonresident student or worker" includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) "Aggravated offenses" means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) "Institution of higher education" means any post-secondary school under the supervision of the Kansas board of regents.

Sec. 12. K.S.A. 22-4906 is hereby amended to read as follows: 22-4906. (a) Except as provided in subsection (d), any person required to register as provided in this act shall be required to register: (1) Upon the first conviction of a sexually violent crime as defined in subsection (c) of K.S.A. 22-4902, and amendments thereto, any offense as defined in subsection (a) of K.S.A. 22-4902, and amendments thereto, or any offense as defined in subsection (d) of K.S.A. 22-4902, and amendments thereto, if

not confined, for a period of 10 years after conviction, or, if confined, for a period of 10 years after paroled, discharged or released, whichever date is most recent. The ten-year period shall not apply to any person while the person is incarcerated in any jail or correctional facility. The ten-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement; or (2) upon a second or subsequent conviction for such person's lifetime.

(b) Upon the first conviction, liability for registration terminates, if not confined, at the expiration of 10 years from the date of conviction, or, if confined, at the expiration of 10 years from the date of parole, discharge or release, whichever date is most recent. The ten-year period shall not apply to any person while the person is incarcerated in any jail or correctional facility. The ten-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement. Liability for registration does not terminate if the convicted offender again becomes liable to register as provided by this act during that period.

(c) Any person who has been convicted of an aggravated offense shall be required to register for such person's lifetime.

(d) Any person who has been convicted of any of the following offenses shall be required to register for such person's lifetime:

(1) Aggravated human trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the victim is less than 14 years of age;

(2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;

(4) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto;

(5) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age; or

(6) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto.

(e) Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall register for such person's lifetime.

(f) Any nonresident worker shall register for the duration of such person's employment. The provisions of this subsection are in addition to subsections (a) and (b).

(g) Any nonresident student shall register for the duration of such person's attendance at a school or educational institution as provided in this act. The provisions of this subsection are in addition to subsections (a) and (b).

(h) (1) Notwithstanding any other provisions of this section, a person who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, and amendments thereto, shall be required to register until such person reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. The five-year period shall not apply to any person while that person is incarcerated in any jail, juvenile facility or correctional facility. The five-year registration requirement does not include any time period when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement.

(2) (A) A person who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is

not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, and amendments thereto, may, by the court:

(i) Be required to register pursuant to the provisions of paragraph (1);

(ii) not be required to register if the judge, on the record, finds substantial and compelling reasons therefor; or

(iii) be required to register with the sheriff pursuant to K.S.A. 22-4904, and amendments thereto, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires the juvenile to register but such registration is not open to the public, the juvenile shall provide a copy of such court order to the sheriff at the time of registration. The sheriff shall forward a copy of such court order to the Kansas bureau of investigation.

(B) If such juvenile offender violates a condition of release during the term of the conditional release, the judge may require the juvenile offender to register pursuant to paragraph (1).

(3) Liability for registration does not terminate if the adjudicated offender again becomes liable to register as provided by this act during the required period.

(4) The provisions of paragraph (2)(A)(ii) shall apply to adjudications on and after the effective date of this act and retroactively to adjudications prior to July 1, 2007.

(i) Any person moving to the state of Kansas who has been convicted in another state, and who was required to register under that state's laws, shall register for the same length of time required by that state or Kansas, whichever length of time is longer. The provisions of this subsection shall apply to convictions prior to June 1, 2006 and to persons who moved to Kansas prior to June 1, 2006.

Sec. 13. K.S.A. 2007 Supp. 38-2361 is hereby amended to read as follows: 38-2361. (a) Upon adjudication as a juvenile offender

pursuant to K.S.A. 2007 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2007 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2007 Supp. 38-2368, and amendments thereto, and subject to subsection (a) of K.S.A. 2007 Supp. 38-2365, and amendments thereto, the court may impose one or more of the following sentencing alternatives. In the event that any sentencing alternative chosen constitutes an order authorizing or requiring removal of the juvenile from the juvenile's home and such findings either have not previously been made or the findings are not or may no longer be current, the court shall make determinations as required by K.S.A. 2007 Supp. 38-2334 and 38-2335, and amendments thereto.

(1) Place the juvenile on probation through court services or community corrections for a fixed period, subject to terms and conditions the court deems appropriate consistent with juvenile justice programs in the community.

(2) Order the juvenile to participate in a community based program available in such judicial district subject to the terms and conditions the court deems appropriate. This alternative shall not be ordered with the alternative in paragraph (12) and when ordered with the alternative in paragraph (10) shall constitute a recommendation. Requirements pertaining to child support may apply if custody is vested with other than a parent.

(3) Place the juvenile in the custody of a parent or other suitable person, subject to terms and conditions consistent with juvenile justice programs in the community. This alternative shall not be ordered with the alternative in paragraph (10) or (12). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(4) Order the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (b).

(5) Suspend or restrict the juvenile's driver's license or privilege to operate a motor vehicle on the streets and highways

of this state pursuant to subsection (c).

(6) Order the juvenile to perform charitable or community service work.

(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding \$1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to K.S.A. 21-4603b, and amendments thereto.

(10) Place the juvenile in the custody of the commissioner as provided in K.S.A. 2007 Supp. 38-2365, and amendments thereto. This alternative shall not be ordered with the alternative in paragraph (3) or (12). Except for a mandatory drug and alcohol evaluation, when this alternative is ordered with alternatives in paragraphs (2), (4) and (9), such orders shall constitute a recommendation by the court. Requirements pertaining to child support shall apply under this alternative.

(11) Commit the juvenile to a sanctions house for a period no longer than 28 days subject to the provisions of subsection (f).

(12) Commit the juvenile directly to the custody of the commissioner for a period of confinement in a juvenile correctional facility and a period of aftercare pursuant to K.S.A. 2007 Supp. 38-2369, and amendments thereto. The provisions of K.S.A. 2007 Supp. 38-2365, and amendments thereto, shall not apply to juveniles committed pursuant to this provision. This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

(b) If the court orders the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug and alcohol evaluation pursuant to subsection (a)(4), the following provisions apply:

(1) The court may order the juvenile offender to participate

in counseling or mediation sessions or a program of education, including placement in an alternative educational program approved by a local school board. The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative. Mediation may include the victim but shall not be mandatory for the victim; and

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that makes such a requirement, the court shall order and, if adjudicated for any other offense, the court may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and alcohol evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program as provided herein. If the court finds that the juvenile and those legally liable for the juvenile's support are indigent, the court may waive the fee. In no event shall the fee be assessed against the commissioner or the juvenile justice authority nor shall the fee be assessed against the secretary of social and rehabilitation services or the department of social and rehabilitation services if the juvenile is in the secretary's care, custody and control.

(c) If the court orders suspension or restriction of a

juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (a)(5), the following provisions apply:

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile offender who does not have a driver's license may have driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court; and

(2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state, the court may enter an order which places conditions on the juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which the juvenile offender shall be required to carry any time the juvenile offender is operating a motor vehicle on the streets and highways of this state. The order shall prescribe a definite time period for the conditions imposed. Upon entering an order restricting a juvenile offender's license, the court shall require the juvenile offender to

surrender such juvenile offender's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on the juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing the conditions is required to be carried by the juvenile offender when operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of the juvenile offender's state of issuance. The court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until the division issues the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the juvenile offender may apply to the division for the return of the license previously surrendered by the juvenile offender. In the event the license has expired, the juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender violates any of the conditions imposed under this subsection, the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which the juvenile offender is convicted of violating such conditions.

(d) The following provisions apply to the court's determination of whether to order reparation or restitution

pursuant to subsection (a)(7):

(1) The court shall order the juvenile to make reparation or restitution to the aggrieved party for the damage or loss caused by the juvenile offender's offense unless it finds compelling circumstances that would render a plan of reparation or restitution unworkable. If the court finds compelling circumstances that would render a plan of reparation or restitution unworkable, the court shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court may order the juvenile to perform charitable or social service for organizations performing services for the community; and

(2) restitution may include, but shall not be limited to, the amount of damage or loss caused by the juvenile's offense. Restitution may be made by payment of an amount fixed by the court or by working for the parties sustaining loss in the manner ordered by the court. An order of monetary restitution shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall not be affected by the termination of the court's jurisdiction over the juvenile offender.

(e) If the court imposes a fine pursuant to subsection (a)(8), the following provisions apply:

(1) The amount of the fine may not exceed \$1,000 for each offense. The amount of the fine should be related to the seriousness of the offense and the juvenile's ability to pay. Payment of a fine may be required in a lump sum or installments;

(2) in determining whether to impose a fine and the amount to be imposed, the court shall consider that imposition of a fine is most appropriate in cases where the juvenile has derived pecuniary gain from the offense and that imposition of a restitution order is preferable to imposition of a fine; and

(3) any fine imposed by court shall be a judgment against the juvenile that may be collected by the court by garnishment or other execution as on judgments in civil cases. Such judgment

shall not be affected by the termination of the court's jurisdiction over the juvenile.

(f) If the court commits the juvenile to a sanctions house pursuant to subsection (a)(11), the following provisions shall apply:

(1) The court may order commitment for up to 28 days for the same offense or violation of sentencing condition. The court shall review the commitment every seven days and, may shorten the initial commitment or, if the initial term is less than 28 days, may extend the commitment;

(2) if, in the sentencing order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and holidays, prior to court review of the placement. The court and all parties shall be notified of the sanctions house placement; and

(3) a juvenile over 18 years of age and less than 23 years of age at sentencing shall be committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by paragraph (1), but shall not be committed to or confined in a juvenile detention facility.

(g) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court's minutes.

(h) In addition to the requirements of K.S.A. 2007 Supp. 38-2373, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(i) Except as further provided, if a juvenile has been adjudged to be a juvenile offender for an offense that if committed by an adult would constitute the commission of: (1)

Aggravated human trafficking, as defined in K.S.A. 2007 Supp. 21-3447, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto; (5) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in parts (1) through (6); the court shall issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends. If only one attendance center exists, for which the victim and juvenile are eligible to attend, in the school district where the victim and the juvenile reside, the court shall hear testimony and take evidence from the victim, the juvenile, their families and a representative of the school district as to why the juvenile should or should not be allowed to remain at the attendance center attended by the victim. After such hearing, the court may issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends.

(j) The sentencing hearing shall be open to the public as provided in K.S.A. 2007 Supp. 38-2353, and amendments thereto.

Sec. 14. K.S.A. 2007 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

(a) All offenses which statutorily and specifically authorize forfeiture;

(b) violations of the uniform controlled substances act,

K.S.A. 65-4101 et seq., and amendments thereto;

(c) theft which is classified as a felony violation pursuant to K.S.A. 21-3701, and amendments thereto, in which the property taken was livestock;

(d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments thereto;

(e) money laundering, as described in K.S.A. 65-4142, and amendments thereto;

(f) gambling, as described in K.S.A. 21-4303, and amendments thereto, and commercial gambling, as described in K.S.A. 21-4304, and amendments thereto;

(g) counterfeiting, as described in K.S.A. ~~2007--Supp-~~ 21-3763, and amendments thereto;

(h) violations of K.S.A. ~~2007--Supp-~~ 21-4019, and amendments thereto;

(i) medicaid fraud, as described in K.S.A. 21-3844 et seq., and amendments thereto;

(j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(m) furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. ~~2007--Supp-~~ 21-3451, and amendments thereto;

(n) the commission of any felony by a person whose presence in the United States is in violation of federal immigration laws;
and

(o) human trafficking as described in K.S.A. 21-3446 or

21-3447, and amendments thereto.

Sec. 15. K.S.A. 2007 Supp. 75-451 is hereby amended to read as follows: 75-451. The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, human trafficking or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of K.S.A. 2007 Supp. 75-451 to 75-458, inclusive, and amendments thereto, is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, human trafficking or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, human trafficking or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

Sec. 16. K.S.A. 2007 Supp. 75-452 is hereby amended to read as follows: 75-452. The following words and phrases when used in K.S.A. 2007 Supp. 75-451 to 75-458, inclusive, and amendments thereto, shall have the meanings respectively ascribed to them herein, unless the context clearly requires otherwise:

(a) "Abuse" means:

- (1) Causing or attempting to cause physical harm;
- (2) placing another person in fear of imminent physical harm;
- (3) causing another person to engage involuntarily in sexual relations by force, threats or duress, or threatening to do so;
- (4) engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror;
- (5) depriving another person of necessary health care, housing or food; or
- (6) unreasonably and forcibly restraining the physical movement of another.

(b) "Confidential address" means a residential street

address, school street address or work street address of an individual, as specified on the individual's application to be a program participant under K.S.A. 2007 Supp. 75-451 to 75-458, inclusive, and amendments thereto.

(c) "Confidential mailing address" means an address that is recognized for delivery by the United States postal service.

(d) "Domestic violence" means abuse committed against a victim or the victim's spouse or dependent child by:

(1) A current or former spouse of the victim;

(2) a person with whom the victim shares parentage of a child in common;

(3) a person who is cohabitating with, or has cohabitated with, the victim;

(4) a person who is related by blood or marriage; or

(5) a person with whom the victim has or had a dating or engagement relationship.

(e) "Program participant" means a person certified as a program participant under K.S.A. 2007 Supp. 75-453, and amendments thereto.

(f) "Enrolling agent" means state and local agencies, law enforcement offices, nonprofit agencies and any others designated by the secretary of state that provide counseling and shelter services to victims of domestic violence, sexual assault, human trafficking or stalking.

(g) "Sexual assault" means an act which if committed in this state would constitute any crime defined in article 35 of chapter 21 of the Kansas Statutes Annotated.

(h) "Stalking" means an act which if committed in this state would constitute "stalking" as defined by K.S.A. 60-31a01, and amendments thereto.

(i) "Human trafficking" means an act which if committed in this state would constitute the crime of human trafficking as defined by K.S.A. 21-3446, and amendments thereto.

Sec. 17. K.S.A. 2007 Supp. 75-453 is hereby amended to read as follows: 75-453. (a) An adult person, an adult family member

residing with the victim, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply by and through an enrolling agent to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. Program participants shall not apply directly to the secretary of state. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state signed by the applicant and enrolling agent under penalty of perjury and providing:

(1) A statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, human trafficking or stalking and:

(i) That the applicant fears for the applicant's safety or the applicant's children's safety or the safety of the minor or incapacitated person on whose behalf the application is made; or

(ii) that by virtue of living with an enrolled program participant, the applicant fears that the knowledge or publication of the applicants' whereabouts will put the enrolled participant in danger.

(2) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail.

(3) The confidential mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state.

(4) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault, human trafficking or stalking.

(5) Evidence that the applicant or the minor or incapacitated person on whose behalf the application is made, is

a victim of domestic violence, sexual assault, human trafficking or stalking, or is an adult family member residing with the victim. This evidence may include any of the following:

(A) Law enforcement, court or other federal, state or local government records or files.

(B) Documentation from a public or private entity that provides assistance to victims of domestic violence, sexual assault, human trafficking or stalking.

(C) Documentation from a religious, medical or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual assault, human trafficking or stalking.

(D) Other forms of evidence as determined by the secretary of state.

(6) A statement of whether there are any existing court orders involving the applicant for child support, child custody or child visitation and whether there are any active court actions involving the applicant for child support, child custody or child visitation, the name and address of legal counsel of record and the last known address of the other parent or parents involved in those court orders or court actions.

(7) The signature of the applicant and of any individual or representative of any enrolling agent who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) Applications shall be filed in accordance with procedures prescribed by the secretary of state.

(c) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule and regulation establish a renewal procedure.

(d) Upon certification in the program, in any case where there are court orders or court actions identified in subsection

(a)(6), the secretary of state shall, within 10 days, notify the other parent or parents of the address designated by the secretary of state for the program participant and the designation of the secretary of state as agent for purpose of service of process. The notice shall be given by mail, return receipt requested, postage prepaid, to the last known address of the other parent to be notified. A copy shall also be sent to that parent's counsel of record.

(e) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under K.S.A. 21-3711, and amendments thereto, or other applicable statutes.

AMENDMENT No. 2

2008

insertball458(1)

New Sec. 2. (a) In the state of Kansas, it shall be unlawful for a business entity to knowingly engage in a pattern or practice of hiring, recruiting or referring for a fee for employment an unauthorized alien.

(b) Upon finding probable cause to believe a violation of this section has occurred, the attorney general may bring a civil suit in district court to enforce this section except that no such suit shall be filed against a business entity who participated in the federal e-verify system, if such business entity provides documentation that such system was used prior to the hiring of the specific persons alleged to be unauthorized aliens and that such system did not raise concerns about such persons being unauthorized aliens.

(c) If the district court, after conducting a trial, finds a business entity to be in violation of this section, the court shall enter an injunction permanently enjoining the business entity from further violation of this section.

(d) If a district court, after notice and hearing finds a business entity to be in violation of a permanent injunction issued pursuant to subsection (c), the court shall order the business entity to appear and show cause why such business entity should not be held in contempt.

(e) Any business entity named as a defendant in a suit brought under authority of this section may, as an affirmative defense to such charge, plead and prove that the business entity properly completed an I-9 form as required by federal law in regard to the hiring of the person or persons alleged to be unauthorized aliens.

Amendment No. 3

2008

insertball1458(2)

New Sec. 5. (a) There is hereby established within the office of the attorney general an illegal immigration enforcement division.

(b) The illegal immigration enforcement division shall be responsible for the investigation and enforcement of the criminal and civil prohibitions established under this act, the provisions of K.S.A. 21-3446, 21-3447 and 21-4409, and amendments thereto, and sections 7 and 8, and amendments thereto.

(c) The attorney general shall have authority to prosecute any civil or criminal violation under this act.

Proposed Amendment to SB 458

On page 14, following line 14, by inserting:

"Sec. _____. K.S.A. 2007 Supp. 8-243 is hereby amended to read as follows: 8-243. (a) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act the driver's license as applied for by the applicant. Such license shall bear the class or classes of motor vehicles which the licensee is entitled to drive, a distinguishing number assigned to the licensee, the full legal name, date of birth, gender, address of principal residence and a brief description of the licensee, a colored digital photograph of the licensee, a facsimile of the signature of the licensee and the statement provided for in subsection (b). No driver's license shall be valid until it has been signed by the licensee. All drivers' licenses issued to persons under the age of 21 years shall be readily distinguishable from licenses issued to persons age 21 years or older. In addition, all drivers' licenses issued to persons under the age of 18 years shall also be readily distinguishable from licenses issued to persons age 18 years or older. The secretary of revenue shall implement a vertical format to make drivers' licenses issued to persons under the age of 21 more readily distinguishable. Except as otherwise provided, no driver's license issued by the division shall be valid until a colored digital photograph of such licensee has been taken and verified before being placed on the driver's license. The secretary of revenue shall prescribe a fee of ~~not--more--than--\$4~~ \$12 and upon the payment of such fee, the division shall cause a colored digital photograph of such applicant to be placed on the driver's license. Upon payment of such fee prescribed by the secretary of revenue, plus payment of the fee required by K.S.A. 8-246, and amendments thereto, for issuance of a new license, the division shall issue to such licensee a new license containing a colored digital photograph of such licensee. A driver's license which does not contain the principal address as required may be issued to persons who are program participants pursuant to K.S.A.

2007 Supp. 75-455, and amendments thereto, upon payment of the fee required by K.S.A. 8-246, and amendments thereto. All Kansas drivers' licenses and identification cards shall have physical security features designed to prevent tampering, counterfeiting or duplication of the document for fraudulent purposes. The secretary of revenue shall incorporate common machine-readable technology into all Kansas drivers' licenses and identification cards.

(b) All Kansas drivers' licenses issued to any person 16 years of age or older shall contain a form which provides a statement for making a gift of all or any part of the body of the licensee in accordance with the revised uniform anatomical gift act, K.S.A. 2007 Supp. 65-3220 through 65-3244, and amendments thereto, except as otherwise provided by this subsection. The statement to be effective shall be signed by the licensee in the presence of two witnesses who shall sign the statement in the presence of the donor. The gift becomes effective upon the death of the donor. Delivery of the license during the donor's lifetime is not necessary to make a valid gift. Any valid gift statement executed prior to July 1, 1994, shall remain effective until invalidated. The word "Donor" shall be placed on the front of a licensee's driver's license, indicating that the statement for making an anatomical gift under this subsection has been executed by such licensee.

(c) Any person who is deaf or hard of hearing may request that the division issue to such person a driver's license which is readily distinguishable from drivers' licenses issued to other drivers and upon such request the division shall issue such license. Drivers' licenses issued to persons who are deaf or hard of hearing and under the age of 21 years shall be readily distinguishable from drivers' licenses issued to persons who are deaf or hard of hearing and 21 years of age or older. Upon satisfaction of subsection (a), the division shall issue a receipt of application permitting the operation of a vehicle

consistent with the requested class, if there are no other restrictions or limitations, pending the division's verification of the information and production of a driver's license.

(d) A driver's license issued to a person required to be registered under K.S.A. 22-4901 et seq., and amendments thereto, shall be assigned a distinguishing number by the division which will readily indicate to law enforcement officers that such person is a registered offender. The division shall develop a numbering system to implement the provisions of this subsection.

Sec. _____. K.S.A. 2007 Supp. 8-299 is hereby amended to read as follows: 8-299. There is hereby created in the state treasury the photo fee fund. All moneys credited to the photo fee fund shall be used by the department of revenue only for the purpose of funding the administration and operation, including equipment, associated with the issuance of drivers' licenses and identification cards and licenses to carry concealed weapons. All expenditures from the photo fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.

Sec. _____. K.S.A. 2007 Supp. 8-1324 is hereby amended to read as follows: 8-1324. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card.

(b) For the purpose of obtaining an identification card, an applicant shall submit, with the application, proof of age, proof of identity and proof of lawful presence. An applicant shall submit with the application a photo identity document, except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth, and documentation showing the applicant's name, the applicant's address of principal residence and the applicant's social security account number. The applicant's social security number shall remain confidential and shall not be disclosed, except as

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provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number, the applicant shall provide proof of lawful presence and Kansas residency. The division shall assign a distinguishing number to the identification card. Before issuing an identification card to a person, the division shall make reasonable efforts to verify with the issuing agency the issuance, validity and completeness of each document required to be presented by the applicant to prove age, identity and lawful presence.

(c) The division shall not issue an identification card to any person who fails to provide proof that the person is lawfully present in the United States. If an applicant provides evidence of lawful presence as set out in subsections (b)(2)(E) through (2)(I) of K.S.A. 8-240, and amendments thereto, or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B) of K.S.A. 8-240, and amendments thereto, the division may only issue a temporary identification card to the person under the following conditions: (A) A temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year; (B) a temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date upon which it expires; (C) no temporary identification card issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by K.S.A. 8-1325, and amendments thereto; and (D) a temporary identification card issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions set forth in this subsection (c) for the issuance of the original temporary identification card.

(d) The division shall not issue an identification card to any person who holds a current valid Kansas driver's license

unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

(e) The division shall refuse to issue an identification card to a person holding a driver's license or identification card issued by another state without confirmation that the person is terminating or has terminated the license or identification card.

(f) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(g) The division shall require payment of a fee of \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10. In addition to the fees prescribed by this subsection, the division shall require payment of the photo fee established pursuant to K.S.A. 8-243, and amendments thereto, for the cost of the photograph to be placed on the identification card.

(h) All Kansas identification cards shall have physical security features designed to prevent tampering, counterfeiting or duplication for fraudulent purposes.

(i) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

(1) The person owns, leases or rents a place of domicile in this state;

(2) the person engages in a trade, business or profession in this state;

(3) the person is registered to vote in this state;

(4) the person enrolls the person's child in a school in this state; or

(5) the person registers the person's motor vehicle in this

state.

(j) The division shall require that any person applying for an identification card submit to a mandatory facial image capture.

(k) The director of vehicles may issue a temporary identification card to an applicant who cannot provide valid documentary evidence as defined by subsection (c), if the applicant provides compelling evidence proving current lawful presence. Any temporary identification card issued pursuant to this subparagraph shall be valid for one year.

(l) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act an identification card. Such identification card shall bear a distinguishing number assigned to the cardholder, the full legal name, date of birth, address of principal residence, a brief description of the cardholder, a colored digital photograph of the cardholder, and a facsimile of the signature of the cardholder. An identification card which does not contain the address of principal residence of the cardholder as required may be issued to persons who are program participants pursuant to K.S.A. 2007 Supp. 75-455, and amendments thereto.";

By renumbering sections accordingly;

Repealer and title changes