



**Senate Committee on Federal and State Affairs
Opponent Testimony on Senate Bill 196
Presented by William Wilk, Senior Director of Government Affairs**

Thursday, March 6, 2025

Mister Chair and members of the committee, my name is William Wilk, Senior Director of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium, and large-sized businesses across the state advocating for policies to improve the economic climate in Kansas. On behalf of the Kansas Business Coalition for Immigration Reform we appreciate the opportunity to submit opponent testimony on Senate Bill 196, a bill which prohibits the employment of unauthorized aliens by business entities and requires the use and registration of the E-Verify program on all business entities.

Senate Bill 196 would create a significant regulatory burden, would subject businesses to invest significant financial and other resources to ensure that they comply with and are protected from the draconian penalties for non-compliance, and would have a general deleterious and detrimental impact on the Kansas business and community. Specifically, this bill would create an aggressive, invasive, and costly system of employment verification on all Kansas businesses. Moreover, in some respects SB 196 is duplicative of federal law and is not carefully crafted, would result in the imposition of state penalties on top of the penalties imposed under federal law. Relatedly, this new state regime creates criminal sanctions on businesses that would be in addition to potential criminal sanctions under federal law. Finally, if SB 196 were to become law, it would be impossible for businesses to meet the bill's costly time frame for implementation. The goal of this bill is to prevent illegal immigration, however with the bill's broad definitions and severe penalties this legislation would suppress business operations.

The bill as written would apply to every type of business entity, from self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, to foreign limited liability companies. Any "business entity" that possesses a business license or registration to conduct business in the state of Kansas is subject to this law.

First and foremost, since 1986 with the passage of the Immigration and Reform Control Act, by Congress, it is already illegal for any employer to knowingly hire someone who is not authorized to work in the United States. Moreover, the Immigration and Nationality Act passed by Congress added provisions making it mandatory for employers to verify the employment eligibility of all new hires through an employment verification system commonly referred to as the I-9 process.

E-Verify is an optional (unless you are a federal contractor) work authorization eligibility verification system run by the United States Department of Homeland Security - (DHS). The

program is a partnership between DHS and the Social Security Administration (SSA). The intent of this system is to compare information utilized in the I-9 process to records available to DHS and SSA to confirm employment eligibility. The E-Verify tool serves to weed out individuals who are not authorized to work out of the labor pool by conducting a cross check of government data bases with data from I-9 forms. Simply put, if the verification check does not result in match up, the individual is not work authorized and thus not allowed to work.

As recent as 2021 the United States Citizenship and Immigration Services (USCIS) office discovered several deficiencies in E-Verify's processes for confirming the identity during work authorization verification.

One deficiency was the photo matching process not being fully automated and relying on the employer to confirm the individual's identity by manually reviewing photos. This manual confirmation process takes precious time away from core business functions.

E-Verify has proven to be unreliable with several deficiencies additionally with:

- In FY 2019 an error of 280,000 non-US citizens were considered "employment authorized" without using the photo-matching process to confirm their identities.
- In the E-Verify drivers licenses verification process the system deemed 613,000 "employment authorized" individuals who did not meet USCIS' own identification requirements.
- Per the USCIS report from 2021: *"Until USCIS addresses E-Verify's deficiencies, it cannot ensure the system provides accurate employment eligibility results."*

E-Verify is at its core an electronic system designed for the purpose of comparing biographical data in the DHS systems and/or matching the social security number and name in the SSA system to the data provided by the employee upon their hire by an employer. This cross-checking process does not actually determine whether someone is truly authorized to work in the United States. Instead, E-Verify simply helps to reduce the instances of the use of counterfeit documentation to demonstrate employment authorization. It is possible for one be here illegally but still be verified by the E-Verify system as authorized to work. It is also important to note that employers are limited in their ability to inquire of applicants about their status in the United States other than to utilize the I-9 and or E-Verify process to confirm authorization. There are significant potential penalties provided by 8 U.S.C §1324b for these unfair immigration related employment practices.

Since the new Trump Administration has come into office, we have been monitoring what is recommended on immigration. The Administration has not recommended a mandatory use of E-Verify on all employers in the United States. True immigration reform is needed and must come from a comprehensive package advanced and approved by Congress at the federal level to address security, workforce needs, and pathways to legal work authorization.

SB 196 does more than just require Kansas businesses to enroll and participate in E-Verify. Section 2 of the bill creates a new state regulatory scheme that exposes Kansas business to

increased reporting obligations, investigations, and court ordered temporary or permanent suspensions of business licenses.

Section 2 allows a complaint to be brought against a business entity that allegedly employs an unauthorized alien. As previously mentioned, federal law prohibits employers from asking for the immigration status of an employee. Employers must verify employment eligibility—in non-discriminatory manner and these types of complaints could expose employers to additional risk in this area.

1. The complaint, once filed with a county attorney, district attorney, or the attorney general, MUST be investigated.
2. If a violation is found, then the court SHALL order the business entity to terminate the employee, and sign an affidavit they have terminated the employee and commit to no further such employment. In determining whether the employee is in fact unauthorized, the investigators and court SHALL only consider the determination of eligibility provided by the federal government through USCIS.
3. The information provided comes from a source that there is no certainty that reliable information is being provided for this process. Furthermore, employers have no opportunity to present evidence that they followed the law with respect to this issue.

The penalty for violation of the law is temporary suspension and after three violations permanent revocation of a business licenses—a death penalty for a business.

Section 4 calls upon Kansas businesses to annually report a long list of items sure to result in intrusive audits by the Kansas Department of Revenue at a time when our national leaders are calling for a retreat of IRS audits.

Section 5 authorizes the claw back of income tax deductions for wages paid to unauthorized workers. Again, expanding the scope of government rather than reducing it.

This is a complex bill with many parts that will have significant impacts on businesses. We have prepared a list of questions we respectfully ask to be answered. These questions will help all of us fully understand the scope and impact of this bill should it become law.

On behalf of the Kansas Business Coalition for Immigration Reform (members listed below) we would urge the committee to oppose this legislation.

In closing, this legislation would have a direct negative impact on the Kansas business community. Thank you for the opportunity to testify in opposition to Senate Bill 196, and I am happy to answer any questions you might have at the appropriate time.

Civic Council of Greater Kansas City
Community Bankers Association of Kansas
Emporia Chamber of Commerce
Greater Kansas City Chamber of Commerce

Greater Topeka Partnership
Kansas Agribusiness Retailers Association
Kansas Bankers Association
Kansas Beer Wholesalers

**Kansas Building Industry Association
Kansas Chamber of Commerce
Kansas City Kansas Chamber of Commerce
Kansas Contractors Association
Kansas Cooperative Council
Kansas Corn Growers Association
Kansas Dairy Association
Kansas Farm Bureau
Kansas Grain and Feed Association
Kansas Hospital Association
Kansas Livestock Association
Kansas Pork Association
Kansas Restaurant and Hospitality
Association**

**Kansas Society of Human Resource
Management
Lawrence Chamber of Commerce
Manhattan Area Chamber of Commerce
METL Coalition
National Federation of Independent
Business
Olathe Chamber of Commerce
Overland Park Chamber of Commerce
Renew Kansas Biofuels Association
Shawnee Chamber of Commerce
Sisters of Charity of Leavenworth Office of
Justice, Peace, and Integrity of Creation
Travel Industry Association of Kansas
Wichita Regional Chamber of Commerce**

Questions and Concerns of the Kansas Business Coalition

SB 196 is captioned as a bill that prohibits the employment of unauthorized aliens by business entities and public employers; requires use and registration in the E-Verify program; and prohibits the income tax deduction for wages paid to unauthorized aliens.

Section 1 of the bill redefines key words to give broad application of employment prohibitions and potential penalties to virtually all business entities and persons providing services/employees. It also broadens the scope of the term “business license” to include all types of permits or licenses that may be temporarily or permanently suspended for violation of the act. The bill as drafted raises many questions.

I. Who is regulated by Section 1 of the bill?

Short answer: most employees and most employers.

A. Employees: On page 1, line 12-17. The definition of employee means **any person directed, allowed, or permitted to perform labor or services of any kind by an employer**, with the exception of casual domestic labor hired to work around the individual’s residence.

- Question: Why are casual domestic labor hired to work around a residence exempt?
- Question: What is casual domestic labor hired to work around a residence? Does this include employees in a residential facility like a skilled nursing facility etc.?

B. Employers: On page 1, line 18-31). Who is an employer? The bill does not define employer. Instead, the bill defines a “business entity” to mean **any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not -for- profit.**

- Question: Would this bill apply to churches? What business entities would not be included?

Sections 1(c)(1)&(2) - Note that the definition of business entities includes self-employed individuals, partnerships, corporations (foreign and domestic) and limited liability companies **and any entity that possess a business license** is exempt from getting a business license, or should have a business license but does not.

- Question: If a business entity includes the commonly known legal entities and any entity that possesses a business license, what licensees would be included?

C. **Business license** defined: (Section 1 (d) (p.1, line 32-36; p. 2 lines 1-2) A business license is **any license, permit, certificate, approval, registration, charter, or authorization to perform a service or conduct any activity, enterprise, profession, or occupation in the state.**

- Question: Would this include all state licenses such as cosmetology, nursing, law, engineers, plumbers etc.?
- Question: The definition includes “certificate” would this include a “certificate of convenience from the Kansas Corporation Commission?”

II. New state enforcement provisions contained in Section 2:

The new section 2 (p. 2. Lines 17-23) reiterates current state law (K.S.A. 21-6509).

- (a) It is unlawful for an employer to knowingly hire or to recruit or refer for a fee an unauthorized alien for employment in this state. It shall be a violation of this section for an employer to
- (1) Use a contract, subcontract, or other independent contractor agreement to obtain the labor of an unauthorized alien in this state; or
 - (2) Knowingly contract with an unauthorized alien or with a person who employes or contracts with an unauthorized alien to perform the labor.

- Question: Why is the term knowingly omitted from section (a)(1) when it is included in (a) and (a)(2)?

- Question: How is the term knowingly defined for purpose of this statutory provision?
- Question: How do the requirements of this statute impact the ability of a business entity to hire an independent contractor? For example, a business hires an independent skilled tradesperson (i.e., plumber) to provide a service. The business entity is not permitted to utilize E-Verify on a non-employee and the skilled tradesperson may not work for an employer.

The apparent consequences of violation of this new provision are as follows:

Section 2 (b)(p. 2 lines 24-26) provides that enforcement of the provisions of the section may be brought as civil actions in Kansas courts by the county or district attorney or attorney general.

Section 2(c)(1) (p. 2 lines 27-41) sets forth the audit and investigation process of potential violations by:

- (a) Authorizing the Attorney General to develop a complaint form for a person to allege a violation of the act. The complaint does not have to include the complainant's social security number, or require notarization.
 - (b) Upon receipt of the complaint on the AG form, that an employer has knowingly employed an unauthorized alien the county or district attorney or the attorney general **SHALL** investigate.
 - (c) If the complaint is not made on the AG form, then the county or district attorney or attorney general **MAY** investigate. (Summarized for brevity and emphasis added.)
- Question: If the complaint is on the form developed by the Attorney General, the complaint shall be investigated. What is the standard of review of the investigation?
 - Question: Does the complainant have to provide facts to support their claim considering the complainant must allege the employer “knowingly” employed an unauthorized alien?
 - Question: What protection does the business entity have against frivolous claims by citizens or even competing businesses?

- Question: How will a county or district attorney determine if a complaint is based solely on race, color, or national origin?
- Question: How will a business entity ensure it is able to comply with 8 USC §1324b when required to discharge an individual based on an investigation that can be alleged to be motivated by national origin or citizenship status?
- Question: Does the business entity have any protections against “fishing expeditions” or targeting by aggressive county or district attorneys or the Attorney General?
- Question: Can a business entity that is falsely accused and investigated make a claim against the state or county for damages?

Section 2 (c)(3) provides that a person who knowingly files a false and frivolous complaint under this section is guilty of a class C nonperson misdemeanor.

- Question: What is a frivolous complaint? Who determines what is frivolous? Can a business entity sue the claimant for defamation or some other tort to recover damages caused by the frivolous complaint?

Section 2(c) (2) (p1, lines 42-43 - p. 3, lines 1-8) provides for a complaint to be referred to the county in which the alleged unauthorized alien is, **OR WAS previously**, employed by the business entity. This section authorizes local law enforcement to assist in investigating the complaint. This section also requires the prosecuting officer to verify employment eligibility through the federal government. (Summarized for brevity and emphasis added.)

- Question: Does this section allow investigation into an employee’s status to verify the employment eligibility of the employee? Employers are prohibited under federal law from asking for the status of an employee. Do the provisions of Section 2 require the employer to investigate the immigration status of the employee?
- Question: Does this section apply to individuals no longer employed by a business entity?
- Question: Does local law enforcement have the capacity to engage in these duties in addition to their regularly required duties?

- Question: With the potential consequence of criminal sanctions under other federal and state statutes what restrictions or requirements are imposed upon local law enforcement in the investigation of these complaints? Are there 4th and 5th Amendment issues implicated?
- Question: If local law enforcement participates in a 287(g) arrangement with the federal government what restrictions or requirements are imposed upon local law enforcement in the investigation of these complaints? Are there 4th and 5th Amendment of the U.S. Constitution issues in that context as well?

Section (e)(1)(p. 3 lines 15-43) provides that a business entity that violates the provisions of the section the **court SHALL** order the business to terminate the employment of all unauthorized aliens and file an affidavit with the relevant county, or district attorney within 3 business days that all unauthorized aliens have been terminated and the business entity will not knowingly or intentionally employ an unauthorized alien in this state.

If the business fails to file the affidavit, the **court SHALL order** the suspension **of ALL** business licenses until the business entity files such signed affidavit. (Summarized for brevity and emphasis added.)

- Question: Does this provision violate the Fifth Amendment of the U.S. Constitution protecting citizens from self-incrimination, double jeopardy, and arbitrary government action? Is this a violation of due process?

Section (e)(2)(A)-(C) (p. 3 lines 26-37) sets forth the penalties that the court shall order for violation of this section and are summarized as follows:

1. First violation-suspension of all business licenses held by the business entity for at least 1 day but not more than 30 days;
2. Second violation-suspension of all business licenses held by the business entity for at least 30 days but not more than 1 year;
3. Third Violation-permanent suspension of all business licenses held by the company and revocation of the business entity's registration

as a corporation, limited liability company, or limited partnership in the state. (Summarized for brevity.)

- Question: What constitutes a violation? Is a violation an event on a given day or by employment of a single unauthorized person? If a license is suspended, can it be and how might it be reinstated? Is a license reinstated through the court order or does it require additional filings (time and fees) with the licensing authority.
- Question: What license would be suspended under this section? The definition of license includes all types of licenses. Most licenses are held in the name of a person. Would a suspension apply ONLY to licenses held by the business or any employees/owners with licenses to conduct services under the name of the business?
- If a license is issued by a local municipality, what authority does the state have to override the home rule powers to suspend temporarily or permanently a license?

Section 2(f)(1)(p.3, lines 38-43) provides investigators **shall ONLY** verify employment eligibility through the federal government.(Summarized for brevity.)

Section 2(f)(2)(p. 4, lines 1-11) provides that the courts **shall only consider** the federal government employment eligibility determination in deciding if a violation has occurred. (Summarized for brevity.)

- Question: This section mandates that investigators and courts only consider the evidence of employment verification of an alleged unauthorized employee by data only available to USCIS which the employer does not have access to at any point in time?
- Question: How can an employer protect themselves from a violation under this statute if the employer utilizes E-Verify and is provided with confirmation by E-Verify that the employee is authorized for employment, and that information is incorrect because you only note that the E-Verify check is a rebuttable presumption? Please remember employers are provided with access to a different system than the means referenced in the statute under 1373(c) for the investigator.

- Question: The bill mentions that there is a rebuttable presumption (p. 4 line 8-11). By what path, and when, can a defendant business entity offer evidence? Is the business entity required to appeal a determination to a higher court? If so, what is the standard of review? What is the accuracy rate of the federal verification system? Please review. See [USCIS OIG audit Aug 23 2021](#) .
- Does the business entity or a licensee have a property interest in the license that requires the government to provide a due process hearing prior to its suspension or revocation?

Section 2 (g) (1) and (2)(p. 4 lines 12-19) address business that comply in good faith and offer the business entity a rebuttable presumption or an affirmative defense

- Question: When would the business entity/ defendant have an opportunity to offer evidence of compliance with the federal or state requirements if the court is restricted to review of the federal determination only?
- Question: The wording of (g)(2) is non-sensical. Are employers being provided an affirmative defense as it relates to some federal process or if so, what is the nature of the affirmative defense?

Section 2 (h)(p. 4, lines 20-23) provides that the penalties imposed by section 2 may be separate from commensurate with, or in addition to, any criminal penalty pursuant to KSA 21-6509 ¹ (Summarized for brevity.)

- Question: The provisions of section 2 are focused on civil investigations and civil penalties. What are the protections for the business entity from

¹ **21-6509. Knowingly employing an alien illegally within the territory of the United States.** (a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States.

(b) Knowingly employing an alien illegally within the territory of the United States is a class C misdemeanor.

(c) The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

evidence and affidavits signed to address civil violations becoming the basis for criminal prosecutions?

- Attorney General Kris Kobach announced an agreement with USCIS². USCIS also announced that unauthorized aliens must register and be fingerprinted. How will these enforcement tools impact an employers' efforts past and present to comply with employment verification procedures? ³
- Do the provisions of section 2 apply to existing employees or only those hired after July 1, 2025? If an audit is performed by USCIS, or county, district, or the Attorney General, can the employment status of all employees be questioned and what protections do employers have? Do the protections of Section 2(g)(1) and (2) apply? What, if any, protections do the employers who have relied upon I-9 procedures for employment verification have against claims brought under Section 2? What if any protections do employers who have relied upon E-Verify have against claims brought under section 2?

III. Section E-Verify Concerns.

Section 3 (a)(1)(p. 4 lines 24-43 p. 5 lines 1-4) requires every business entity doing business in Kansas that employs 1 or more employees to register with and utilize E-Verify for every new employee on or after July 1, 2025.

- **Question:** How does this section apply to a self-employed person that is a business entity, but the owner is not an employee?

The business entity must retain employee records for 3 years past the ending date of employment. This section authorizes the county, district attorney or attorney general to access the information upon request and the business entity is required to provide access to the information.

²[https://www.ag.ks.gov/Home/Components/News/News/154/1292#:~:text=TOPEKA%20%2D%20\(Feb.%2017%2C,Enforcement%20to%20remove%20criminal%20illegal.](https://www.ag.ks.gov/Home/Components/News/News/154/1292#:~:text=TOPEKA%20%2D%20(Feb.%2017%2C,Enforcement%20to%20remove%20criminal%20illegal.)

³ <https://www.uscis.gov/alienregistration>

- Question: Are the county or district attorney or Attorney General required to get a subpoena prior to seeking this information? If not, why is this not a violation of due process protections?
- Question: Are the requirements of this section the same as those of the federal government? If not, why? Doesn't this create additional cost and paperwork for the business entity created by inconsistent record retention requirements for the exact same records?

Section 3(a)(2) (p. 4 lines 34-39) provide that the provisions of Section 3(a) (1) may be enforced in the courts through civil action by county, district attorney or attorney general and if there is a finding that a business entity has not complied the court shall order suspension of ALL licenses for not less than 10 days and no more than 1 year. (Summarized for brevity.)

- Question: Is this automatic suspension of all licenses a violation of due process?

Section 3 (b) (p.4, lines 40-42) requires every public employer to register and use E-Verify for new employees starting July 1, 2025.

- Question: Are current employees exempt from the requirements of verification through E-Verify?
- Question: How can an employer utilize E-Verify for existing employees when that type of usage violates the E-Verify MOU and could result in an employer being unable to participate in E-Verify which would lead to the employer violating this statute? In other words, does this statute create a scenario that would force an employer to violate the E-Verify requirements and thus be banned from using E-Verify as required by this statute?

Section 3 (c)(p. 4 line 43, p. 5 line 1-6) prohibits public employers from contracting for any service unless the contractor uses E verify. The requirements apply to contracts entered into after July 1, 2025. (All of Section 3 summarized for brevity.)

- Question: Does the federal law allow local law enforcement to access employment records of E verify without cause?
- Question: How will public employers validate that a contractor utilizes E-Verify for purposes of complying with this statute?

IV. Department of Revenue Audits.

New Sec. 4. (p. 5 Lines 5-31). (a) All business entities shall annually submit a signed affidavit to the secretary of revenue that states:

(1) Whether the business entity:

(A) Utilized a business expense or business loss deduction in determining federal adjusted gross income;

(B) employed any employees or independent contractors for the tax year in question and the number of such employees or contractors;

(C) is enrolled in and is actively participating in E-Verify;

(D) has used E-Verify to confirm the employment authorization of every employee hired on or after July 1, 2025; and

(E) has confirmed that any independent contractor paid by the business entity is an independent contractor who is registered with and utilizing E-Verify to verify the employment authorization of all new employees; and

(2) the business entity's identification number signifying the employer's enrollment in E-Verify.

(b) The secretary of revenue may audit any business entity that:

(1) Fails to timely submit an affidavit required by this subsection; or

(2) the secretary has probable to believe the business entity is out of compliance with this section.

(c) If the secretary of revenue determines that a business entity has knowingly made material misrepresentations of fact regarding information contained in

the affidavit, the business entity shall be required to add back business deductions taken, to the extent such deductions constitute wages or remuneration paid to employees whose employment authorization was not verified using E-Verify, in determining the business entity's adjusted gross income used to calculate the business entity's state tax liability.

- Question: What will this cost employers? Does this require an employer to ask every employee their immigration status every year? Does federal law allow employers to make such inquiries? Will the business entity be given a hearing prior to being penalized?

V. Tax penalties.

Section 5 (p. 5 starts on line 32 with the current Kansas tax law KSA 79-32,117 but is amended on page 10 as follows):

(xxx) (1) For all taxable years beginning after December 31, 2024: (A) Wages or remuneration for the performance of labor paid to an individual claimed as a deduction for federal income tax purposes by a taxpayer if the individual is an unauthorized alien. The provisions of this subsection shall apply regardless of whether an internal revenue service form 1099 is issued in conjunction with the wages or remuneration; and (B) any deductible business expense claimed as a deduction for federal income tax purposes of wages or remuneration for the performance of labor paid to an independent contractor who is not registered with and utilizing the E-Verify system to verify the federal employment authorization of all new employees. (2) For purposes of this subsection, "E-Verify," "new employee" and "unauthorized alien" mean the same as defined in section 1, and amendments thereto.

