

HOUSE BILL No. 2525

By Committee on Federal and State Affairs

1-25

1 AN ACT concerning immigration; relating to the employment of
2 unauthorized aliens.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 12, and amendments thereto,
6 unless the context otherwise requires:

7 (a) "Agency" means any state agency, department, board or
8 commission, any political subdivision of the state or any municipality.

9 (b) "Alien" means any person who is not a citizen or national of the
10 United States, as described in 8 U.S.C. § 1101 et seq.

11 (c) "E-verify" means an electronic employment verification system as
12 jointly administered by the United States department of homeland security
13 and the social security administration or its successor program, pursuant to
14 8 U.S.C. § 1324a, which is used to verify the employment authorization of
15 employees.

16 (d) "Employee" means any person who performs employment
17 services for an employer pursuant to an employment relationship between
18 the employee and the employer.

19 (e) "Employer" means any individual or type of organization that
20 transacts business in this state and that employs one or more individuals
21 who perform employment services in this state.

22 (f) "Municipality" shall have the same meaning as defined in K.S.A.
23 75-1117, and amendments thereto.

24 (g) "Secretary" means the secretary of the department of labor.

25 (h) "Unauthorized alien" means an alien who is not authorized to
26 work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

27 Sec. 2. It is unlawful for an employer to knowingly hire, recruit or
28 refer for a fee for employment in this state an unauthorized alien.

29 Sec. 3. (a) The attorney general shall receive and may investigate any
30 complaint filed with the attorney general that an employer knowingly
31 employed an unauthorized alien in violation of section 2, and amendments
32 thereto. A complaint filed with the attorney general shall be in writing and
33 signed by the individual filing such complaint.

34 (b) When investigating any complaint, the attorney general shall
35 verify the work authorization of the alleged unauthorized alien with the
36 United States government pursuant to 8 U.S.C. § 1373(c).

1 (c) If, after an investigation, the attorney general determines that an
2 employer has knowingly employed an unauthorized alien, the attorney
3 general shall notify:

- 4 (1) The United States immigration and customs enforcement;
- 5 (2) the law enforcement agencies with jurisdiction of the municipality
6 in which the unauthorized alien was allegedly employed; and
- 7 (3) the district or county attorney for the county in which the
8 unauthorized alien was allegedly employed.

9 Sec. 4. (a) Upon receiving notification from the attorney general that
10 an employer has knowingly employed an unauthorized alien, the district or
11 county attorney may bring a civil action against such employer for a
12 violation of section 2, and amendments thereto. A separate action may be
13 filed for each business location at which the employer employs an
14 unauthorized alien.

15 (b) On a finding of the first violation of section 2, and amendments
16 thereto, by an employer, the court may order the following:

- 17 (1) Placement of the employer on probation for three years beginning
18 on the date of the order; and
- 19 (2) execution of an affidavit by the employer that includes statements
20 that the employer has terminated the employment of all unauthorized
21 aliens and that the employer shall not knowingly employ an unauthorized
22 alien.

23 (c) On a finding of a second violation of section 2, and amendments
24 thereto, by an employer, the court may order the following:

- 25 (1) Placement of the employer on probation for 10 years beginning on
26 the date of the order; and
- 27 (2) execution of an affidavit by the employer that includes statements
28 that the employer has terminated the employment of all unauthorized
29 aliens and that the employer shall not knowingly employ an unauthorized
30 alien.

31 (d) (1) On a finding of a third or subsequent violation of section 2,
32 and amendments thereto, by an employer, the court may order the
33 appropriate agencies to suspend the employer's license or licenses for a
34 period of time determined by the court, or that such licenses be
35 permanently revoked.

36 (2) A court may consider the following factors, if applicable, in
37 determining whether to order the suspension of an employer's license for a
38 certain period of time or the permanent revocation of such license:

- 39 (A) The number of unauthorized aliens employed by the employer;
- 40 (B) any prior violations of statutes or rules and regulations by the
41 employer;
- 42 (C) the degree of harm resulting from the violation of section 2, and
43 amendments thereto;

1 (D) the extent to which the employer made good faith efforts to
2 comply with any applicable requirements of federal or state law;

3 (E) the duration of the violation of section 2, and amendments
4 thereto;

5 (F) the role of the directors, officers or agents of the employer in
6 violating section 2, and amendments thereto; and

7 (G) any other factors the court deems relevant.

8 (e) During any probationary period ordered by a court, the employer
9 shall file a quarterly report with the attorney general and the district or
10 county attorney concerning each new individual the employer hires at the
11 specific business location where the unauthorized alien was employed.

12 (f) Any affidavit the employer is ordered to execute shall be signed
13 by the employer within 30 calendar days after the date of the order. If an
14 employer fails to execute an affidavit as ordered by the court, the court
15 may order the appropriate agencies to suspend the employer's license or
16 licenses until such time as the employer executes the required affidavit.

17 (g) When making a determination of whether an employee is an
18 unauthorized alien, a court shall only consider the federal government's
19 determination pursuant to 8 U.S.C. § 1373(c). The court shall take judicial
20 notice of any verification of the immigration status previously provided by
21 the federal government. The court may, and at the request of a party shall,
22 request the federal government to provide, in automated, documentary or
23 testimonial form, a new verification of the immigration status of the
24 employee pursuant to 8 U.S.C. § 1373(c). The most recent determination
25 of the immigration status of an employee by the federal government shall
26 create a rebuttable presumption as to the employee's immigration status.

27 (h) An employer that has complied in good faith with the
28 requirements of 8 U.S.C. § 1324a(b) shall create a rebuttable presumption
29 that the employer did not knowingly employ an unauthorized alien.

30 (i) The court shall dismiss any action filed against an employer if the
31 employer establishes that:

32 (1) The employee performed agricultural labor or provided services
33 of a temporary or seasonal nature as described in 8 U.S.C. § 1101(a)(15)
34 (H)(ii)(a) or (b); and

35 (2) the employer has complied in good faith with all federal laws and
36 regulations governing the foreign worker program described in 8 U.S.C. §
37 1101(a)(15)(H)(ii)(a) or (b).

38 (j) No civil action shall be filed against an employer that has
39 complied in good faith through registration and participation in e-verify to
40 confirm the employment authorization of any employee in question.

41 (k) Where an employer has contracted for the services of an
42 independent contractor, no employment relationship exists between the
43 business entity and the independent contractor or its employees.

1 Sec. 5. Copies of all orders issued by a court under section 4, and
2 amendments thereto, shall be sent to the attorney general. The attorney
3 general shall:

- 4 (a) Maintain copies of all orders received;
- 5 (b) make such orders available on the attorney general's website; and
- 6 (c) establish and maintain a database containing the names and
7 addresses of all employers who have been found to have violated section
8 2, and amendments thereto.

9 Sec. 6. Any agency receiving an order issued under section 4, and
10 amendments thereto, shall immediately suspend or revoke the applicable
11 license of the employer in accordance with such order.

12 Sec. 7. No state, county or local official shall attempt to
13 independently determine whether an individual is an unauthorized alien or
14 an alien not lawfully present in the United States. Such determination shall
15 only be made by verifying the alien's immigration status with the federal
16 government, pursuant to 8 U.S.C. § 1373(c).

17 Sec. 8. (a) It is unlawful for a person to file a complaint under section
18 3, and amendments thereto, that such person knows is false or frivolous.

19 (b) A violation of subsection (a) is a class B misdemeanor.

20 Sec. 9. (a) An employer shall not terminate the employment of any
21 employee, or otherwise discriminate against any such employee because
22 such employee:

23 (1) Filed a complaint against the employer under section 3, and
24 amendments thereto, or otherwise caused any legal proceeding to be
25 brought against the employer for a violation of section 2, and amendments
26 thereto;

27 (2) testified or has been subpoenaed to testify in any legal proceeding
28 brought under section 4, and amendments thereto; or

29 (3) exercised any right afforded to such employee under sections 1
30 through 12, and amendments thereto, on behalf of such employee or other
31 individuals.

32 (b) Any employee who believes that the employee has been
33 terminated or otherwise discriminated against in violation of this section
34 may file a complaint with the secretary not later than 30 calendar days
35 after the violation occurred.

36 (c) The secretary shall receive and may investigate any complaint
37 filed under this section. Not later than 90 days after receipt of a complaint,
38 the secretary shall notify the complainant in writing of the secretary's
39 determination as to whether a violation of this section has occurred.

40 (d) If, after an investigation, the secretary determines that an
41 employer has violated this section, the secretary may bring a civil action
42 against such employer in the county in which the violation occurred. Any
43 such action shall be brought not later than 120 days after receipt of the

1 complaint.

2 (e) A court may order such legal and equitable relief as it deems
3 appropriate, including, but not limited to, reinstatement of the employee
4 and back pay.

5 Sec. 10. (a) Any employer found to have violated section 2, and
6 amendments thereto, shall be prohibited from being awarded, bidding or
7 otherwise attempting to obtain a public works or purchase contract with
8 any agency or municipality for a period of two years commencing on the
9 date of the court order issued under section 4, and amendments thereto.

10 (b) The secretary shall establish and maintain a list of all employers
11 who are debarred pursuant to subsection (a). Such employers shall remain
12 on such list for the duration of the two-year debarment period. At the
13 expiration of the two-year period, the employer shall be removed from the
14 list. The secretary shall make such list readily available to agencies and
15 municipalities.

16 Sec. 11. Nothing in sections 1 through 12, and amendments thereto,
17 shall be construed to require an employer to take any action that the
18 employer believes in good faith would violate federal or state law.

19 Sec. 12. (a) On or before January 1, 2017, the attorney general shall
20 adopt rules and regulations necessary to implement the provisions of
21 sections 1 through 11, and amendments thereto.

22 (b) On or before January 1, 2017, the secretary shall adopt rules and
23 regulations necessary to implement the provisions of sections 1 through
24 11, and amendments thereto.

25 Sec. 13. This act shall take effect and be in force from and after its
26 publication in the statute book.