

February 27, 2008

The Honorable Pete Brungardt, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Brungardt:

SUBJECT: Fiscal Note for SB 458 by Senator Palmer, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning SB 458 is respectfully submitted to your committee.

SB 458 would create the Kansas Illegal Immigration Relief Act. The bill would prohibit any business in the State of Kansas from knowingly hiring an unauthorized alien. The bill would require all businesses in the state to register with a federal database, E-verify, by January 1, 2009. The bill would also require businesses to use the database to verify employment authorization of all new employees and retain all associated documentation for each employee for three years after the employee's termination of employment. In addition, the bill would prohibit public employers from entering into a contract unless the contractor is registered with and utilizing E-verify to verify employment authorization of its employees. Additionally, the bill would be enforced by the courts of the state, any district attorney, any county attorney, or by the Attorney General. Violations of the bill would result in penalties for businesses that include suspension of all licenses for not less than ten, 30, or 90 days; suspension of all licenses for one year; permanent suspension of all licenses; or revocation of the business' registration as a corporation in the state. The bill would prohibit any state, county, or local official from attempting to determine independently whether an individual is an unauthorized alien, but would require this determination to be made by the federal government in accordance with federal law.

The bill would prohibit any payment made to an unauthorized alien employee or to an independent contractor, who is not registered with E-verify, to be allowed as a deductible business expense for state or federal income tax purposes. The bill would require all employers to submit an affidavit to the Kansas Department of Revenue (KDOR) with the annual tax return that states:

1. Whether the employee utilized a business expense or business loss deduction in determining federal adjusted gross income;
2. Whether the employer employed any individuals or independent contractors for the tax year in question and the number of those employees or independent contractors;

3. Whether the employer is enrolled in and is actively participating in E-verify;
4. Whether the employer has used E-verify to confirm the employment eligibility of every employee hired on or after January 1, 2009;
5. Whether the employer has confirmed that any independent contractor who is registered with and utilizing E-verify to verify the employment authorization of all new employees; and
6. The employer's identification number signifying the employer's enrollment in E-verify.

The bill would authorize KDOR to audit any employer who fails to submit this affidavit in a timely manner or any employer who KDOR has probable cause to believe is not complying with the listed requirements. The bill would allow KDOR to collect back business deductions from employers that constituted payments to employees whose employment authorization was not verified using E-verify, if KDOR determines that the employer has falsely represented any information contained in the affidavit.

In addition, the bill defines "employment identity fraud" and would determine it to be a severity level 8, nonperson felony. The bill would also prohibit any illegal alien from receiving any state or local public benefit from any state, county, or local agency, except that which is required to be offered by Title 8 of the U.S. Code. The bill would also require any alien who applies for public benefits to establish lawful citizenship in the United States prior to receiving the benefits. Additionally, the bill would require state, county, and local agencies administering public benefits to seek a memorandum of understanding with the United States Department of Homeland Security (DHS) to participate in the Systematic Alien Verification for Entitlements Program (SAVE).

Additionally, the bill would require all state officials, agencies, and personnel to fully comply with and support the enforcement of federal immigration laws. The bill would also require all law enforcement officers to inquire into the citizenship and immigration status of any person arrested for a violation of state law or municipal ordinance, regardless of the person's national origin, ethnicity, or race. If an arrestee is determined to be an alien, the bill would require the officer to verify if the alien is lawfully present in the U.S. with the Bureau of Immigration and Customs Enforcement (ICE) and cooperate with any request made by ICE to detain or transfer the alien to the custody of the federal government. The bill would also prohibit any official or agent of a state, county, or city law enforcement agency from being restricted from information regarding any individual or exchanging the information with any other federal, state, or local government agency. Also, the bill would prohibit state, county, or city law enforcement agencies from discouraging officers to ask individuals their citizenship or immigration status. The bill would determine any state, county, or city law enforcement agency to be in violation of the bill if the Attorney General determines that any provision of the bill has been violated, which would result in the agency being ineligible for state funding unless the agency could prove to the Attorney General that compliance with the bill is being maintained.

Finally, the bill would require the Division of Motor Vehicles of KDOR to require all persons applying for a driver's license or identification card to provide proof by valid documentary evidence and sign an affidavit swearing that they are a citizen of the U.S. The bill would prohibit any alien from being issued a driver's license or identification card until lawful presence in the U.S. has been verified by DHS.

Estimated State Fiscal Effect				
	FY 2008 SGF	FY 2008 All Funds	FY 2009 SGF	FY 2009 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$75,360	\$75,360
FTE Pos.	--	--	1.00	1.00

The Department of Revenue has no data on how many undocumented aliens are currently employed in the State of Kansas. KDOR also states that with the passage of SB 458, companies would no longer be able to hire new undocumented alien workers which would affect their revenue and profit margin. In addition, KDOR states that this would reduce State General Fund revenue, but a specific amount cannot be estimated. However, KDOR states that there would be a corresponding increase in State General Fund revenue because the bill would prohibit any business from deducting payments made to an unauthorized alien employee as a business expense for Kansas income tax purposes. The agency indicates that this increase in state revenue cannot be estimated.

In addition, the agency estimates its costs to comply with this bill would cost approximately \$75,360. This amount includes \$9,600 for 120 hours of contract programming time \$80 per hour; \$7,040 for 88 hours of contract programming time for testing at \$80 per hour; \$53,527 to hire a Customer Representative Specialist; \$4,430 for one-time other operating expenditures; and \$763 for annual other operating expenditures.

The Department of Labor states that the bill would require verification of immigration status through the E-verify database in the unemployment application process, in addition to computer programming and staff time, but these costs cannot be estimated. Any fiscal effect resulting from the passage of SB 458 is not included in *The FY 2009 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Linda Durand, KBI
Steve Neske, Department of Revenue
Bill Schafer, Department of Labor