

## HOUSE BILL No. 2576

By Committee on Federal and State Affairs

1-31

1 AN ACT concerning immigration; amending K.S.A. 2011 Supp. 21-5918  
2 and 22-2802 and repealing the existing sections.

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

5 New Section 1. As used in sections 1 through 4, and amendments  
6 thereto:

7 (a) "Alien" means an alien unlawfully present in the United States, as  
8 defined by the immigration laws of the United States, 8 U.S.C. § 1101 *et*  
9 *seq.*

10 (b) "Governmental entity" means the state or municipality as such  
11 terms are defined in K.S.A. 75-6102, and amendments thereto.

12 (c) "Harbor" means conduct that tends to substantially facilitate an  
13 alien's remaining in the United States illegally.

14 New Sec. 2. (a) It is unlawful for a person to:

15 (1) Intentionally conceal, harbor or shield or attempt to conceal,  
16 harbor or shield an alien from detection by law enforcement officials in  
17 any place in this state, including, but not limited to, any building or any  
18 means of transportation, if the person recklessly disregards the fact that the  
19 alien has come to, has entered or remains in the United States in violation  
20 of federal law; or

21 (2) intentionally encourage or induce an alien to come to or reside in  
22 the United States if the person recklessly disregards the fact that such  
23 coming to, entering or residing in the United States is or will be in  
24 violation of federal law.

25 (b) (1) Violation of this section is a class A misdemeanor, except as  
26 provided in subsection (b)(2).

27 (2) Violation of this section that involves 10 or more aliens who are  
28 18 years of age or older and who are unlawfully present in the United  
29 States is a severity level 8, person felony.

30 New Sec. 3. (a) No alien who is unlawfully present in the United  
31 States shall receive any governmental entity public benefit, except for  
32 governmental entity public benefits that are required to be offered by 8  
33 U.S.C. § 1621(b), or as provided in K.S.A. 2011 Supp. 76-731a, and  
34 amendments thereto.

35 (b) In addition to providing proof of other eligibility requirements, at  
36 the time of application for any governmental entity public benefit, an

1 individual applicant who is 18 years of age or older shall provide  
2 affirmative proof that the individual applicant is a citizen or a permanent  
3 resident of the United States or is lawfully present in the United States.  
4 Such affirmative proof shall include documentary evidence recognized by  
5 the division of motor vehicles when processing an application for a driver's  
6 license, as established in K.S.A. 8-240, and amendments thereto, as well as  
7 any document issued by the federal government that confirms an alien's  
8 lawful presence in the United States.

9 (c) No governmental entity shall provide any public benefit to any  
10 alien without first verifying that the alien is lawfully present in the United  
11 States and is a qualified alien, as described by 8 U.S.C. §§ 1621 and 1641.  
12 Such verification shall occur through the systematic alien verification for  
13 entitlements program, operated by the United States department of  
14 homeland security.

15 (d) Governmental entities administering public benefits in this state  
16 shall cooperate with the United States department of homeland security in  
17 achieving verification of aliens' lawful presence in the United States in  
18 furtherance of this section.

19 (e) As used in this section, "public benefit" means any grant, contract,  
20 loan or commercial or professional license provided by an agency of any  
21 governmental entity, or any retirement, welfare, health, disability, housing,  
22 food assistance or unemployment benefit under which payments,  
23 assistance, credits or reduced rates or fees are provided, except that in no  
24 event shall the term "public benefit" include any license issued by the  
25 department of wildlife, parks and tourism or licenses and identification  
26 cards issued by the division of motor vehicles.

27 New Sec. 4. (a) It is unlawful for any person to fail to complete or  
28 carry an alien registration document if the person is in violation of 8  
29 U.S.C. §§ 1304(e) or 1306(a), and the person is an alien unlawfully  
30 present in the United States.

31 (b) Violation of this section is a class C misdemeanor. Any fine  
32 imposed for such violation shall not exceed \$100.

33 (c) In the enforcement of this section:

34 (1) An alien's immigration status shall be determined by verification  
35 of the alien's immigration status with the federal government pursuant to 8  
36 U.S.C. § 1373(c). A law enforcement officer shall not attempt to  
37 independently verify the immigration status of any alien.

38 (2) A law enforcement official or agency may not consider race, color  
39 or national origin in the enforcement of this section except to the extent  
40 permitted by the United States constitution and the Kansas constitution.

41 (d) This section shall not apply to a person who maintains  
42 authorization from the federal government to be present in the United  
43 States.

1 (e) Any record that relates to the immigration status of a person is  
2 admissible in court without further foundation or testimony from a  
3 custodian of records if the record is certified as authentic by the  
4 government agency that is responsible for maintaining the record. A  
5 verification of an alien's immigration status received from the federal  
6 government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that  
7 alien's status.

8 New Sec. 5. If any provision of sections 1 through 4, and  
9 amendments thereto, is held to be unconstitutional under the United States  
10 or Kansas constitutions, that provision shall be severed from this act, and  
11 the other provisions of sections 1 through 4, and amendments thereto, shall  
12 remain valid and in effect.

13 Sec. 6. K.S.A. 2011 Supp. 21-5918 is hereby amended to read as  
14 follows: 21-5918. (a) Dealing in false identification documents is  
15 knowingly reproducing, manufacturing, selling or offering for sale any  
16 identification document which:

17 (1) Simulates, purports to be or is designed so as to cause others  
18 reasonably to believe it to be an identification document; and

19 (2) bears a fictitious name or other false information.

20 (b) Vital records identity fraud related to birth, death, marriage and  
21 divorce certificates is:

22 (1) Supplying false information intending that the information be  
23 used to obtain a certified copy of a vital record;

24 (2) making, counterfeiting, altering, amending or mutilating any  
25 certified copy of a vital record without lawful authority and with the intent  
26 to deceive; or

27 (3) obtaining, possessing, using, selling or furnishing or attempting to  
28 obtain, possess or furnish to another a certified copy of a vital record, with  
29 the intent to deceive.

30 (c) (1) Vital records identity fraud is a severity level 8 7, nonperson  
31 felony.

32 (2) Dealing in false identification documents is a severity level 8 6,  
33 nonperson felony.

34 (d) The provisions of this section shall not apply to:

35 (1) A person less than 21 years of age who uses the identification  
36 document of another person to acquire an alcoholic beverage, as defined in  
37 K.S.A. 8-1599, and amendments thereto; or

38 (2) a person less than 18 years of age who uses the identification  
39 documents of another person to acquire:

40 (A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and  
41 amendments thereto;

42 (B) a periodical, videotape or other communication medium that  
43 contains or depicts nudity;

1 (C) admittance to a performance, live or film, that prohibits the  
2 attendance of the person based on age; or

3 (D) an item that is prohibited by law for use or consumption by such  
4 person.

5 (e) As used in this section, "identification document" means any card,  
6 certificate or document or banking instrument including, but not limited to,  
7 credit or debit card, which identifies or purports to identify the bearer of  
8 such document, whether or not intended for use as identification, and  
9 includes, but is not limited to, documents purporting to be drivers' licenses,  
10 nondrivers' identification cards, certified copies of birth, death, marriage  
11 and divorce certificates, social security cards and employee identification  
12 cards.

13 Sec. 7. K.S.A. 2011 Supp. 22-2802 is hereby amended to read as  
14 follows: 22-2802. (1) Any person charged with a crime shall, at the  
15 person's first appearance before a magistrate, be ordered released pending  
16 preliminary examination or trial upon the execution of an appearance bond  
17 in an amount specified by the magistrate and sufficient to assure the  
18 appearance of such person before the magistrate when ordered and to  
19 assure the public safety. *If the person charged with a crime is not a citizen*  
20 *or national of the United States, such person's immigration status shall be*  
21 *verified with the federal government pursuant to 8 U.S.C. § 1373(c). For*  
22 *the purposes of determining the grant of or issuance of appearance bond,*  
23 *it shall be a rebuttable presumption that a person who has been verified by*  
24 *the federal government to be an alien unlawfully present in the United*  
25 *States is a risk of flight.* If the person is being bound over for a felony, the  
26 bond shall also be conditioned on the person's appearance in the district  
27 court or by way of a two-way electronic audio-video communication as  
28 provided in subsection (14) at the time required by the court to answer the  
29 charge against such person and at any time thereafter that the court  
30 requires. Unless the magistrate makes a specific finding otherwise, if the  
31 person is being bonded out for a person felony or a person misdemeanor,  
32 the bond shall be conditioned on the person being prohibited from having  
33 any contact with the alleged victim of such offense for a period of at least  
34 72 hours. The magistrate may impose such of the following additional  
35 conditions of release as will reasonably assure the appearance of the  
36 person for preliminary examination or trial:

37 (a) Place the person in the custody of a designated person or  
38 organization agreeing to supervise such person;

39 (b) place restrictions on the travel, association or place of abode of  
40 the person during the period of release;

41 (c) impose any other condition deemed reasonably necessary to  
42 assure appearance as required, including a condition requiring that the  
43 person return to custody during specified hours;

1 (d) place the person under a house arrest program pursuant to K.S.A.  
2 2011 Supp. 21-6609, and amendments thereto; or

3 (e) place the person under the supervision of a court services officer  
4 responsible for monitoring the person's compliance with any conditions of  
5 release ordered by the magistrate. The magistrate may order the person to  
6 pay for any costs associated with the supervision provided by the court  
7 services department in an amount not to exceed \$15 per week of such  
8 supervision. The magistrate may also order the person to pay for all other  
9 costs associated with the supervision and conditions for compliance in  
10 addition to the \$15 per week.

11 (2) In addition to any conditions of release provided in subsection (1),  
12 for any person charged with a felony, the magistrate may order such  
13 person to submit to a drug and alcohol abuse examination and evaluation  
14 in a public or private treatment facility or state institution and, if  
15 determined by the head of such facility or institution that such person is a  
16 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to  
17 treatment for such drug or alcohol abuse, as a condition of release.

18 (3) The appearance bond shall be executed with sufficient solvent  
19 sureties who are residents of the state of Kansas, unless the magistrate  
20 determines, in the exercise of such magistrate's discretion, that requiring  
21 sureties is not necessary to assure the appearance of the person at the time  
22 ordered.

23 (4) A deposit of cash in the amount of the bond may be made in lieu  
24 of the execution of the bond pursuant to subsection (3). Except as provided  
25 in subsection (5), such deposit shall be in the full amount of the bond and  
26 in no event shall a deposit of cash in less than the full amount of bond be  
27 permitted. Any person charged with a crime who is released on a cash  
28 bond shall be entitled to a refund of all moneys paid for the cash bond,  
29 after deduction of any outstanding restitution, costs, fines and fees, after  
30 the final disposition of the criminal case if the person complies with all  
31 requirements to appear in court. The court may not exclude the option of  
32 posting bond pursuant to subsection (3).

33 (5) Except as provided further, the amount of the appearance bond  
34 shall be the same whether executed as described in subsection (3) or  
35 posted with a deposit of cash as described in subsection (4). When the  
36 appearance bond has been set at \$2,500 or less and the most serious charge  
37 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson  
38 felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and  
39 amendments thereto, the magistrate may allow the person to deposit cash  
40 with the clerk in the amount of 10% of the bond, provided the person  
41 meets at least the following qualifications:

42 (A) Is a resident of the state of Kansas;

43 (B) has a criminal history score category of G, H or I;

1 (C) has no prior history of failure to appear for any court  
2 appearances;

3 (D) has no detainer or hold from any other jurisdiction;

4 (E) has not been extradited from, and is not awaiting extradition to,  
5 another state; and

6 (F) has not been detained for an alleged violation of probation.

7 (6) In the discretion of the court, a person charged with a crime may  
8 be released upon the person's own recognizance by guaranteeing payment  
9 of the amount of the bond for the person's failure to comply with all  
10 requirements to appear in court. The release of a person charged with a  
11 crime upon the person's own recognizance shall not require the deposit of  
12 any cash by the person.

13 (7) The court shall not impose any administrative fee.

14 (8) In determining which conditions of release will reasonably assure  
15 appearance and the public safety, the magistrate shall, on the basis of  
16 available information, take into account the nature and circumstances of  
17 the crime charged; the weight of the evidence against the defendant;  
18 whether the defendant is lawfully present in the United States; the  
19 defendant's family ties, employment, financial resources, character, mental  
20 condition, length of residence in the community, record of convictions,  
21 record of appearance or failure to appear at court proceedings or of flight  
22 to avoid prosecution; the likelihood or propensity of the defendant to  
23 commit crimes while on release, including whether the defendant will be  
24 likely to threaten, harass or cause injury to the victim of the crime or any  
25 witnesses thereto; and whether the defendant is on probation or parole  
26 from a previous offense at the time of the alleged commission of the  
27 subsequent offense.

28 (9) The appearance bond shall set forth all of the conditions of  
29 release.

30 (10) A person for whom conditions of release are imposed and who  
31 continues to be detained as a result of the person's inability to meet the  
32 conditions of release shall be entitled, upon application, to have the  
33 conditions reviewed without unnecessary delay by the magistrate who  
34 imposed them. If the magistrate who imposed conditions of release is not  
35 available, any other magistrate in the county may review such conditions.

36 (11) A magistrate ordering the release of a person on any conditions  
37 specified in this section may at any time amend the order to impose  
38 additional or different conditions of release. If the imposition of additional  
39 or different conditions results in the detention of the person, the provisions  
40 of subsection (10) shall apply.

41 (12) Statements or information offered in determining the conditions  
42 of release need not conform to the rules of evidence. No statement or  
43 admission of the defendant made at such a proceeding shall be received as

1 evidence in any subsequent proceeding against the defendant.

2 (13) The appearance bond and any security required as a condition of  
3 the defendant's release shall be deposited in the office of the magistrate or  
4 the clerk of the court where the release is ordered. If the defendant is  
5 bound to appear before a magistrate or court other than the one ordering  
6 the release, the order of release, together with the bond and security shall  
7 be transmitted to the magistrate or clerk of the court before whom the  
8 defendant is bound to appear.

9 (14) Proceedings before a magistrate as provided in this section to  
10 determine the release conditions of a person charged with a crime  
11 including release upon execution of an appearance bond may be conducted  
12 by two-way electronic audio-video communication between the defendant  
13 and the judge in lieu of personal presence of the defendant or defendant's  
14 counsel in the courtroom in the discretion of the court. The defendant may  
15 be accompanied by the defendant's counsel. The defendant shall be  
16 informed of the defendant's right to be personally present in the courtroom  
17 during such proceeding if the defendant so requests. Exercising the right to  
18 be present shall in no way prejudice the defendant.

19 (15) The magistrate may order the person to pay for any costs  
20 associated with the supervision of the conditions of release of the  
21 appearance bond in an amount not to exceed \$15 per week of such  
22 supervision. As a condition of sentencing under K.S.A. 2011 Supp. 21-  
23 6604, and amendments thereto, the court may impose the full amount of  
24 any such costs in addition to the \$15 per week, including, but not limited to,  
25 costs for treatment and evaluation under subsection (2).

26 Sec. 8. K.S.A. 2011 Supp. 21-5918 and 22-2802 are hereby repealed.

27 Sec. 9. This act shall take effect and be in force from and after its  
28 publication in the statute book.

29