

**SENATE BILL No. 140**

By Committee on Judiciary

2-6

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1 AN ACT concerning immigration; relating to enforcement of federal  
2 immigration laws; determination of citizenship; cooperative  
3 agreements; validity of certain contracts; eligibility for certain public  
4 benefits; effect of immigration status on criminal appearance bonds;  
5 amending K.S.A. 2012 Supp. 22-2802 and repealing the existing  
6 section; also repealing K.S.A. 2012 Supp. 22-2802c.

7

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

9 New Section 1. (a) An official or agency of a governmental entity  
10 shall not adopt a policy that limits or restricts the enforcement of federal  
11 immigration laws to less than the full extent permitted by federal law, or  
12 that in any way limits communication between its officers and federal  
13 immigration officials in violation of 8 U.S.C. § 1373. If, in the judgment of  
14 the attorney general of Kansas, an official or agency of a governmental  
15 entity is in violation of this subsection, such governmental entity shall not  
16 be eligible to receive any funds, grants or appropriations from the state of  
17 Kansas until such violation has ceased and the attorney general has so  
18 certified.

19 (b) Upon any lawful stop, detention or arrest made by a state, county  
20 or city law enforcement officer of this state in the enforcement of any state  
21 or local law, where reasonable suspicion exists that the person is an alien  
22 and is unlawfully present in the United States, a reasonable attempt shall  
23 be made, when practicable, to determine the immigration status of the  
24 person, except if the determination may hinder or obstruct an  
25 investigation. Any person who is arrested and taken into custody shall  
26 have such person's immigration status determined before the person is  
27 released. A law enforcement officer shall not consider race, color or  
28 national origin in implementing the requirements of this section except to  
29 the extent permitted by the United States or Kansas constitution. A person  
30 is presumed to not be an alien who is unlawfully present in the United  
31 States if the person provides to the law enforcement officer any of the  
32 following:

33 (1) An unexpired Kansas driver's license originally issued after April  
34 20, 2007;

35 (2) an unexpired Kansas nondriver's identification card originally  
36 issued after April 20, 2007;

1 (3) a valid tribal enrollment card or other form of tribal identification;  
2 or

3 (4) if the entity requires proof of lawful presence in the United States  
4 before issuance, any valid United States federal, state or local government-  
5 issued identification document.

6 (c) If an alien who is unlawfully present in the United States is  
7 convicted of a violation of state or local law, on discharge from  
8 imprisonment or assessment of any fine that is imposed, U.S. immigration  
9 and customs enforcement or U.S. customs and border protection shall be  
10 notified immediately.

11 (d) Notwithstanding any other law, a law enforcement agency may  
12 securely transport an alien, who the agency has received verification is  
13 unlawfully present in the United States and who is in the agency's custody,  
14 to a federal facility in this state or to any other point of transfer into federal  
15 custody that is outside the jurisdiction of the law enforcement agency. A  
16 law enforcement agency shall obtain judicial authorization before securely  
17 transporting an alien who is unlawfully present in the United States to a  
18 point of transfer that is outside this state.

19 (e) (1) In the implementation of this section, an alien's immigration  
20 status may be determined by:

21 (A) A law enforcement officer who is authorized by the federal  
22 government to verify or ascertain an alien's immigration status; or

23 (B) U.S. immigration and customs enforcement or U.S. customs and  
24 border protection pursuant to 8 U.S.C. § 1373(c).

25 (2) At no point shall any state, county or city law enforcement officer  
26 attempt to independently verify the immigration status of any alien.

27 (f) Except as provided in federal law, officials or agencies of any  
28 governmental entity may not be prohibited or in any way be restricted  
29 from sending, receiving or maintaining information relating to the  
30 immigration status, lawful or unlawful, of any individual or exchanging  
31 that information with any other federal government entity or any  
32 governmental entity for the following official purposes:

33 (1) Determining eligibility for any public benefit, service or license  
34 provided by any federal government entity or any governmental entity;

35 (2) verifying any claim of residence or domicile if determination of  
36 residence or domicile is required under the laws of this state or a judicial  
37 order issued pursuant to a civil or criminal proceeding in this state;

38 (3) if the person is an alien, determining whether the person is in  
39 compliance with the federal registration laws prescribed by the federal  
40 immigration and nationality act; or

41 (4) pursuant to 8 U.S.C. §§ 1373 and 1644.

42 (g) Except in relation to matters in which the officer is adjudged to  
43 have acted in bad faith, a law enforcement officer is indemnified by the

1 law enforcement officer's agency against reasonable costs and expenses,  
2 including attorney fees, incurred by the officer in connection with any  
3 action, suit or proceeding brought pursuant to this section in which the  
4 officer may be a defendant by reason of the officer being or having been a  
5 member of the law enforcement agency.

6 (h) This section shall be implemented in a manner consistent with  
7 federal laws regulating immigration, protecting the civil rights of all  
8 persons and respecting the privileges and immunities of United States  
9 citizens.

10 (i) As used in this section:

11 (1) "Alien" means an alien unlawfully present in the United States, as  
12 defined by the immigration laws of the United States, 8 U.S.C. § 1101 et  
13 seq.

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

16 New Sec. 2. The attorney general shall as quickly as practicable enter  
17 into a cooperative agreement with the United States department of  
18 homeland security pursuant to 8 U.S.C. § 1357(g), to designate specific  
19 state law enforcement officers as officers qualified to exercise the  
20 enforcement powers of federal immigration officers in the United States.  
21 The attorney general may negotiate the cooperative agreement or  
22 participate in its implementation in partnership with other state or local  
23 law enforcement agencies.

24 New Sec. 3. (a) No court of this state shall enforce the terms of, or  
25 otherwise regard as valid, any contract between a party and an alien  
26 unlawfully present in the United States, if the party had direct or  
27 constructive knowledge that the alien was unlawfully present in the United  
28 States at the time the contract was entered into, and the performance of the  
29 contract required the alien to remain unlawfully present in the United  
30 States for more than 24 hours after the time the contract was entered into  
31 or performance could not reasonably be expected to occur without such  
32 alien remaining unlawfully present for such time.

33 (b) This section shall not apply to: A contract for lodging for one  
34 night, or a series of such contracts; a contract for the purchase of food to  
35 be consumed by the alien, or a series of such contracts; a contract for  
36 medical services; or a contract for transportation of the alien that is  
37 intended to facilitate the alien's return to such alien's country of origin.

38 (c) This section shall not apply to a contract authorized by federal  
39 law.

40 (d) In the proceedings of a court of this state, the determination of  
41 whether an alien is unlawfully present in the United States shall be made  
42 by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall  
43 consider only the federal government's determination when deciding

1 whether an alien is unlawfully present in the United States. The court may  
2 take judicial notice of any verification of an individual's immigration  
3 status previously provided by the federal government and may request the  
4 federal government to provide further automated or testimonial  
5 verification.

6 New Sec. 4. (a) No alien who is unlawfully present in the United  
7 States shall receive any state or local public benefit, except for state or  
8 local public benefits that are required to be offered by 8 U.S.C. § 1621(b),  
9 or as provided in K.S.A. 2012 Supp. 76-731a, and amendments thereto.

10 (b) In addition to providing proof of other eligibility requirements, at  
11 the time of application for any state or local public benefit, an individual  
12 applicant who is 18 years of age or older shall provide affirmative proof  
13 that the individual applicant is a citizen or a permanent resident of the  
14 United States or is lawfully present in the United States. Such affirmative  
15 proof shall include documentary evidence recognized by the division of  
16 motor vehicles when processing an application for a driver's license, as  
17 established in K.S.A. 8-240, and amendments thereto, as well as any  
18 document issued by the federal government that confirms an alien's lawful  
19 presence in the United States.

20 (c) No state, county or local agency shall provide any public benefit  
21 to any alien without first verifying that the alien is lawfully present in the  
22 United States and is a qualified alien, as described by 8 U.S.C. §§ 1621  
23 and 1641. Such verification shall occur through the systematic alien  
24 verification for entitlements program, or any successor program, operated  
25 by the United States department of homeland security.

26 (d) State and local agencies administering public benefits in this state  
27 shall cooperate with the United States department of homeland security in  
28 achieving verification of aliens' lawful presence in the United States in  
29 furtherance of this section.

30 (e) As used in this section, "public benefit" means any grant, contract,  
31 loan, permit or license provided by an agency of state or local government,  
32 or any retirement, welfare, health, disability, housing, food assistance or  
33 unemployment benefit under which payments, assistance, credits or  
34 reduced rates or fees are provided, except that in no event shall the term  
35 "public benefit" include any license or identification card issued by the  
36 division of motor vehicles.

37 Sec. 5. K.S.A. 2012 Supp. 22-2802 is hereby amended to read as  
38 follows: 22-2802. (†) (a) Any person charged with a crime shall, at the  
39 person's first appearance before a magistrate, be ordered released pending  
40 preliminary examination or trial upon the execution of an appearance bond  
41 in an amount specified by the magistrate and sufficient to assure the  
42 appearance of such person before the magistrate when ordered and to  
43 assure the public safety. *If the person charged with a crime is not a citizen*

1 *or national of the United States, such person's immigration status shall be*  
2 *verified with the federal government pursuant to 8 U.S.C. § 1373(c). For*  
3 *the purposes of determining the grant of or issuance of an appearance*  
4 *bond, it shall be a rebuttable presumption that a person who has been*  
5 *verified by the federal government to be an alien unlawfully present in the*  
6 *United States is at risk of flight. If the person is being bound over for a*  
7 *felony, the bond shall also be conditioned on the person's appearance in the*  
8 *district court or by way of a two-way electronic audio-video*  
9 *communication as provided in subsection ~~(14)~~ (n) at the time required by*  
10 *the court to answer the charge against such person and at any time*  
11 *thereafter that the court requires. Unless the magistrate makes a specific*  
12 *finding otherwise, if the person is being bonded out for a person felony or*  
13 *a person misdemeanor, the bond shall be conditioned on the person being*  
14 *prohibited from having any contact with the alleged victim of such offense*  
15 *for a period of at least 72 hours. The magistrate may impose such of the*  
16 *following additional conditions of release as will reasonably assure the*  
17 *appearance of the person for preliminary examination or trial:*

18 ~~(a)~~ (1) Place the person in the custody of a designated person or  
19 organization agreeing to supervise such person;

20 ~~(b)~~(2) place restrictions on the travel, association or place of abode of  
21 the person during the period of release;

22 ~~(c)~~ (3) impose any other condition deemed reasonably necessary to  
23 assure appearance as required, including a condition requiring that the  
24 person return to custody during specified hours;

25 ~~(d)~~ (4) place the person under a house arrest program pursuant to  
26 K.S.A. 2012 Supp. 21-6609, and amendments thereto; or

27 ~~(e)~~ (5) place the person under the supervision of a court services  
28 officer responsible for monitoring the person's compliance with any  
29 conditions of release ordered by the magistrate. The magistrate may order  
30 the person to pay for any costs associated with the supervision provided by  
31 the court services department in an amount not to exceed \$15 per week of  
32 such supervision. The magistrate may also order the person to pay for all  
33 other costs associated with the supervision and conditions for compliance  
34 in addition to the \$15 per week.

35 ~~(2)~~ (b) In addition to any conditions of release provided in subsection  
36 ~~(1)~~ (a), for any person charged with a felony, the magistrate may order  
37 such person to submit to a drug and alcohol abuse examination and  
38 evaluation in a public or private treatment facility or state institution and,  
39 if determined by the head of such facility or institution that such person is  
40 a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit  
41 to treatment for such drug or alcohol abuse, as a condition of release.

42 ~~(3)~~ (c) The appearance bond shall be executed with sufficient solvent  
43 sureties who are residents of the state of Kansas, unless the magistrate

1 determines, in the exercise of such magistrate's discretion, that requiring  
2 sureties is not necessary to assure the appearance of the person at the time  
3 ordered.

4 ~~(4)~~ (d) A deposit of cash in the amount of the bond may be made in  
5 lieu of the execution of the bond pursuant to subsection ~~(3)~~ (c). Except as  
6 provided in subsection ~~(5)~~ (e), such deposit shall be in the full amount of  
7 the bond and in no event shall a deposit of cash in less than the full amount  
8 of bond be permitted. Any person charged with a crime who is released on  
9 a cash bond shall be entitled to a refund of all moneys paid for the cash  
10 bond, after deduction of any outstanding restitution, costs, fines and fees,  
11 after the final disposition of the criminal case if the person complies with  
12 all requirements to appear in court. The court may not exclude the option  
13 of posting bond pursuant to subsection ~~(3)~~ (c).

14 ~~(5)~~ (e) Except as provided further, the amount of the appearance bond  
15 shall be the same whether executed as described in subsection ~~(3)~~ (c) or  
16 posted with a deposit of cash as described in subsection ~~(4)~~ (d). When the  
17 appearance bond has been set at \$2,500 or less and the most serious charge  
18 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson  
19 felony, a drug severity level 4 felony committed prior to July 1, 2012, a  
20 drug severity level 5 felony committed on or after July 1, 2012, or a  
21 violation of K.S.A. 8-1567, and amendments thereto, *or K.S.A. 2012 Supp.*  
22 *8-1025, and amendments thereto*, the magistrate may allow the person to  
23 deposit cash with the clerk in the amount of 10% of the bond, provided the  
24 person meets at least the following qualifications:

25 ~~(A)~~ (1) Is a resident of the state of Kansas;  
26 ~~(B)~~ (2) has a criminal history score category of G, H or I;  
27 ~~(C)~~ (3) has no prior history of failure to appear for any court  
28 appearances;

29 ~~(D)~~ (4) has no detainer or hold from any other jurisdiction;

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

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

33 ~~(6)~~ (f) In the discretion of the court, a person charged with a crime  
34 may be released upon the person's own recognizance by guaranteeing  
35 payment of the amount of the bond for the person's failure to comply with  
36 all requirements to appear in court. The release of a person charged with a  
37 crime upon the person's own recognizance shall not require the deposit of  
38 any cash by the person.

39 ~~(7)~~ (g) The court shall not impose any administrative fee.

40 ~~(8)~~ (h) In determining which conditions of release will reasonably  
41 assure appearance and the public safety, the magistrate shall, on the basis  
42 of available information, take into account the nature and circumstances of  
43 the crime charged; the weight of the evidence against the defendant;

1 whether the defendant is lawfully present in the United States; the  
2 defendant's family ties, employment, financial resources, character, mental  
3 condition, length of residence in the community, record of convictions,  
4 record of appearance or failure to appear at court proceedings or of flight  
5 to avoid prosecution; the likelihood or propensity of the defendant to  
6 commit crimes while on release, including whether the defendant will be  
7 likely to threaten, harass or cause injury to the victim of the crime or any  
8 witnesses thereto; and whether the defendant is on probation or parole  
9 from a previous offense at the time of the alleged commission of the  
10 subsequent offense.

11 ~~(9)~~ (i) The appearance bond shall set forth all of the conditions of  
12 release.

13 ~~(10)~~ (j) A person for whom conditions of release are imposed and  
14 who continues to be detained as a result of the person's inability to meet  
15 the conditions of release shall be entitled, upon application, to have the  
16 conditions reviewed without unnecessary delay by the magistrate who  
17 imposed them. If the magistrate who imposed conditions of release is not  
18 available, any other magistrate in the county may review such conditions.

19 ~~(11)~~ (k) A magistrate ordering the release of a person on any  
20 conditions specified in this section may at any time amend the order to  
21 impose additional or different conditions of release. If the imposition of  
22 additional or different conditions results in the detention of the person, the  
23 provisions of subsection ~~(10)~~ (j) shall apply.

24 ~~(12)~~ (l) Statements or information offered in determining the  
25 conditions of release need not conform to the rules of evidence. No  
26 statement or admission of the defendant made at such a proceeding shall  
27 be received as evidence in any subsequent proceeding against the  
28 defendant.

29 ~~(13)~~ (m) The appearance bond and any security required as a  
30 condition of the defendant's release shall be deposited in the office of the  
31 magistrate or the clerk of the court where the release is ordered. If the  
32 defendant is bound to appear before a magistrate or court other than the  
33 one ordering the release, the order of release, together with the bond and  
34 security shall be transmitted to the magistrate or clerk of the court before  
35 whom the defendant is bound to appear.

36 ~~(14)~~ (n) Proceedings before a magistrate as provided in this section to  
37 determine the release conditions of a person charged with a crime  
38 including release upon execution of an appearance bond may be conducted  
39 by two-way electronic audio-video communication between the defendant  
40 and the judge in lieu of personal presence of the defendant or defendant's  
41 counsel in the courtroom in the discretion of the court. The defendant may  
42 be accompanied by the defendant's counsel. The defendant shall be  
43 informed of the defendant's right to be personally present in the courtroom

1 during such proceeding if the defendant so requests. Exercising the right to  
2 be present shall in no way prejudice the defendant.

3 ~~(15)~~ (o) The magistrate may order the person to pay for any costs  
4 associated with the supervision of the conditions of release of the  
5 appearance bond in an amount not to exceed \$15 per week of such  
6 supervision. As a condition of sentencing under K.S.A. 2012 Supp. 21-  
7 6604, and amendments thereto, the court may impose the full amount of  
8 any such costs in addition to the \$15 per week, including, but not limited  
9 to, costs for treatment and evaluation under subsection ~~(2)~~ (b).

10 New Sec. 6. If any provision of this act is held to be unconstitutional  
11 under the United States or Kansas constitutions, that provision shall be  
12 severed from this act, and the other provisions of this act shall remain  
13 valid and in effect.

14 Sec. 7. K.S.A. 2012 Supp. 22-2802 and 22-2802c are hereby  
15 repealed.

16 Sec. 8. This act shall take effect and be in force from and after its  
17 publication in the statute book.