

April 30, 2021

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285A-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2434 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2434 is respectfully submitted to your committee.

HB 2434 would require all businesses in Kansas to use E-Verify beginning January 1, 2022. E-Verify is a web-based system that allows employers to confirm the eligibility of employees to work in the United States. Businesses would be required to retain all documentation associated with using E-Verify for up to three years and the documentation must be made available to the Attorney General or the county attorney or district attorney upon request. Businesses that are found not to be using E-Verify or properly retaining documentation could have their state licenses suspended for at least 10 days but not more than one year. The bill would require public employers to use E-Verify prior to September 1, 2021. The bill would prohibit state agencies from entering into contracts for services unless the contractor uses E-Verify.

Under HB 2434, it would be unlawful for a business or public employer to knowingly hire an unauthorized alien for employment in the state. The bill would require the Office of the Attorney General to create a complaint form for individuals to report alleged violations. Complaints submitted to the Office of the Attorney General or the county attorney or district attorney must also be submitted to the county in which the alleged unauthorized alien is, or was previously, employed. The bill would require notification be given to the U.S. Immigration and Customs Enforcement if any legal action is brought against a business. No action may be brought against a business for a violation occurring before January 1, 2022. If a business is found to have knowingly hired an unauthorized alien, the business would be ordered by the courts to terminate the employment of all unauthorized aliens. For a first violation, the courts would order the suspension of all state licenses for at least one day but not more than 30 days. For a second violation, the courts would order the suspension of all state licenses for at least 30 days but not

more than one year. For a third violation, the courts would order the permanent suspension of all state licenses and the revocation of the business's registration as a corporation, limited liability company or limited partnership in Kansas.

The bill would require a business to submit a signed affidavit to the Department of Revenue that states whether the business utilized a deduction in determining federal adjusted gross income; employed any employees or independent contractors and the number of employees or contractors; is enrolled in and is actively participating in E-Verify; has used E-Verify to confirm the employment authorization of every employee hired on or after January 1, 2022; and has confirmed that any independent contractor paid by the business entity is an independent contractor who is registered with and utilizing E-Verify. If the Department of Revenue finds that a business knowingly made material misrepresentations of fact in the affidavit, the business entity would be required to add back any business deductions taken when calculating its tax liability.

The Department of Revenue estimates that HB 2434 would increase State General Fund revenues by \$63.4 million in FY 2023, \$64.0 million in FY 2024 and \$64.6 million in FY 2025. The estimate for FY 2023 assumes an estimated 44,000 employed unauthorized aliens in Kansas earning an annual mean wage of \$36,000 that is taxed at an effective rate of 4.0 percent ($\$63,360,000 = 44,000 \text{ employed unauthorized aliens} \times \$36,000 \text{ annual mean wage} \times 4.0 \text{ percent effective tax rate}$). The estimates for FY 2024 and FY 2025 include the same assumptions with a 1.0 percent growth in state tax returns each fiscal year. For the number of employed unauthorized aliens in Kansas, the Department reviewed information from the Migration Policy Institute that estimated the state had 70,000 unauthorized immigrants in 2018, of whom 44,000 were employed in construction, service and manufacturing. The Department reviewed 2016 information from the Pew Research Center that also indicated unauthorized immigrants were primarily employed in construction, service and manufacturing industries. Using data from those industries and the State Occupational Employment and Wage Estimates for Kansas by the U.S. Bureau of Labor Statistics, the Department of Revenue estimated the annual mean wage of workers in those industries is \$36,000.

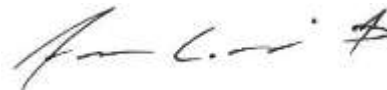
The Department of Revenue estimates the bill would require additional expenditures of \$169,665 from the State General Fund and 1.00 new FTE position in FY 2022. This amount includes \$72,577 for a new State Auditor I FTE position (\$66,600 for salary and wages; \$4,564 for one-time workstation set up; and \$1,413 for ongoing operating costs) and \$97,088 for tax system programming modifications.

The Office of the Attorney General estimates the complaint intake and enforcement provisions of the bill would have a fiscal effect on the Office, but the fiscal effect cannot be determined because the number of complaints that would be received is unknown. The Office of the Attorney General indicates that the number of complaints would likely be low and could be handled within existing resources. Additional resources could be needed in the out years if complaint volume is high. The Office does not anticipate litigation costs from enactment of the bill. If the bill becomes law, the Office notes that it does not expect the law to be challenged in court because the U.S. Supreme Court upheld a similar law in Arizona.

The bill could increase the number of cases filed in and actions required by district courts. This would require additional judge and court staff time to hear and process cases. The additional cases would also result in additional revenue from docket fees and fines. However, the fiscal effect on the courts cannot be determined because the number of cases that would be filed is unknown.

According to the Department of Administration, the bill would have no fiscal effect on state hiring or procurement and contract processes. The Department indicates most agencies have been using E-Verify. The Secretary of State indicates the bill would have no fiscal effect on the agency. Any fiscal effect associated with HB 2434 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Jeff Scannell, Department of Administration
Debbie Thomas, Judiciary
Willie Prescott, Office of the Attorney General
Jay Hall, Association of Counties
Wendi Stark, League of Municipalities
Lynn Robinson, Department of Revenue
Sandy Tompkins, Office of the Secretary of State