

## HOUSE BILL No. 2202

By Representatives Kinzer and A. Brown, Crum, Donohoe, Huebert,  
Kiegerl, Myers, Patton and Watkins

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10 AN ACT concerning enforcement of laws pertaining to unlawful immi-  
11 gration; amending K.S.A. 21-3830, 22-2802 and 25-2416 and repealing  
12 the existing sections.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) All state officials, agencies and personnel shall  
16 fully comply with, and, to the full extent permitted by law, support the  
17 enforcement of federal law prohibiting the entry into, presence or resi-  
18 dence in the United States of aliens in violation of federal immigration  
19 law.

20 (b) All state, county and city law enforcement officers shall inquire  
21 into the citizenship and immigration status of any person arrested for a  
22 violation of any state law or municipal ordinance, regardless of the per-  
23 son's national origin, ethnicity or race, where such inquiry does not sig-  
24 nificantly expand the duration of the detention. In all such cases where a  
25 person indicates that such person is not a citizen or national of the United  
26 States, the law enforcement agent shall verify with the federal govern-  
27 ment whether the alien is lawfully or unlawfully present in the United  
28 States, pursuant to 8 U.S.C. 1373(c). If the alien is verified to be unlaw-  
29 fully present in the United States, the law enforcement officer shall co-  
30 operate with any request by federal immigration authorities to detain the  
31 alien or transfer the alien to the custody of the federal government.

32 (c) Pursuant to 8 U.S.C. 1373 and 1644, no official, personnel or  
33 agent of a city, county or state law enforcement agency may be prohibited  
34 or in any way restricted from sending, receiving or maintaining, infor-  
35 mation regarding the immigration status, lawful or unlawful, of any in-  
36 dividual, or exchanging such information with any other federal, state or  
37 local government entity. No city, county or state law enforcement agency  
38 may by ordinance, resolution, official policy or informal policy, prevent  
39 its officers from asking individuals their citizenship or immigration status.

40 (d) Any law enforcement agency shall be deemed to be in violation  
41 of this section if the attorney general determines that such a violation has  
42 occurred. An agency found to be in violation of this section shall be denied  
43 state funding until it can prove to the attorney general that it is in com-

1 pliance with this act. Upon the request of any member of the legislature,  
2 the attorney general shall issue an opinion as to whether or not a particular  
3 law enforcement agency is in violation of this section.

4 (e) The provisions of this section shall be part of and supplemental  
5 to the Kansas code of criminal procedure.

6 New Sec. 2. The superintendent of the Kansas highway patrol shall  
7 as quickly as practicable enter into a cooperative agreement with the  
8 United States department of homeland security, pursuant to 8 U.S.C.  
9 1357(g), to designate specific state law enforcement officers as officers  
10 qualified to exercise the enforcement powers of federal immigration of-  
11 ficers in the United States. The superintendent may negotiate the coop-  
12 erative agreement or participate in its implementation in partnership with  
13 other state or local law enforcement agencies.

14 New Sec. 3. (a) Employment identity fraud is willfully presenting to  
15 an employer false or misleading identification documents for the purpose  
16 of obtaining employment in the state of Kansas.

17 (b) Employment identity fraud is a severity level 8, nonperson felony.

18 (c) This section shall be part of and supplemental to the Kansas crim-  
19 inal code.

20 New Sec. 4. Sections 1 through 6, and amendments thereto, shall be  
21 construed so as to be fully consistent with federal immigration and labor  
22 laws.

23 New Sec. 5. Sections 1 through 6, and amendments thereto, shall  
24 not be construed to require an employer to take any action that the em-  
25 ployer believes in good faith would violate federal or state law.

26 New Sec. 6. If any section, subsection, paragraph or provision of sec-  
27 tions 1 through 6, and amendments thereto, shall be held to be invalid  
28 by any court for any reason, it shall be presumed that sections 1 through  
29 6, and amendments thereto, would have been passed by the legislature  
30 without such invalid section, subsection, paragraph or provision, and such  
31 finding or construction shall not in any way affect the remainder of sec-  
32 tions 1 through 6, and amendments thereto.

33 Sec. 7. K.S.A. 21-3830 is hereby amended to read as follows: 21-  
34 3830. (a) Dealing in false identification documents is reproducing, man-  
35 ufacturing, selling or offering for sale any identification document which:

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

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

39 (b) As used in this section, "identification document" means any card,  
40 certificate or document or banking instrument including, but not limited  
41 to, credit or debit card, which identifies or purports to identify the bearer  
42 of such document, whether or not intended for use as identification, and  
43 includes, but is not limited to, documents purporting to be drivers' li-

- 1 censes, nondrivers' identification cards, certified copies of birth, death,  
2 marriage and divorce certificates, social security cards and employee iden-  
3 tification cards.
- 4 (c) Dealing in false identification documents is a severity level § 6,  
5 nonperson felony.
- 6 (d) Vital records identity fraud related to birth, death, marriage and  
7 divorce certificates is:
- 8 (1) Willfully and knowingly supplying false information intending that  
9 the information be used to obtain a certified copy of a vital record;
- 10 (2) making, counterfeiting, altering, amending or mutilating any cer-  
11 tified copy of a vital record:
- 12 (A) Without lawful authority; and  
13 (B) with the intent to deceive; or  
14 (3) willfully and knowingly obtaining, possessing, using, selling or fur-  
15 nishing or attempting to obtain, possess or furnish to another for any  
16 purpose of deception a certified copy of a vital record.
- 17 (e) Vital records identity fraud is a severity level § 7, nonperson  
18 felony.
- 19 (f) The prohibitions in subsections (a) and (b) do not apply to:
- 20 (1) A person less than 21 years of age who uses the identification  
21 document of another person to acquire an alcoholic beverage, as defined  
22 in K.S.A. 8-1599, and amendments thereto;
- 23 (2) a person less than 18 years of age who uses the identification  
24 documents of another person to acquire:
- 25 (A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and  
26 amendments thereto;
- 27 (B) a periodical, videotape or other communication medium that con-  
28 tains or depicts nudity;
- 29 (C) admittance to a performance, live or film, that prohibits the at-  
30 tendance of the person based on age; or  
31 (D) an item that is prohibited by law for use or consumption by such  
32 person.
- 33 (g) This section shall be part of and supplemental to the Kansas crim-  
34 inal code.
- 35 Sec. 8. K.S.A. 22-2802 is hereby amended to read as follows: 22-  
36 2802. (1) Any person charged with a crime shall, at the person's first  
37 appearance before a magistrate, be ordered released pending preliminary  
38 examination or trial upon the execution of an appearance bond in an  
39 amount specified by the magistrate and sufficient to assure the appear-  
40 ance of such person before the magistrate when ordered and to assure  
41 the public safety. *If the person charged with a crime is not a citizen or*  
42 *national of the United States, such person's immigration status shall be*  
43 *verified with the federal government pursuant to 8 U.S.C. 1373(c). For*

1 *the purposes of determining the grant of or issuance of an appearance*  
2 *bond, it shall be a rebuttable presumption that a person who has been*  
3 *verified by the federal government to be an alien who is not lawfully*  
4 *present in the United States is at risk of flight.* If the person is being  
5 bound over for a felony, the bond shall also be conditioned on the person's  
6 appearance in the district court or by way of a two-way electronic audio-  
7 video communication as provided in subsection (14) at the time required  
8 by the court to answer the charge against such person and at any time  
9 thereafter that the court requires. Unless the magistrate makes a specific  
10 finding otherwise, if the person is being bonded out for a person felony  
11 or a person misdemeanor, the bond shall be conditioned on the person  
12 being prohibited from having any contact with the alleged victim of such  
13 offense for a period of at least 72 hours. The magistrate may impose such  
14 of the following additional conditions of release as will reasonably assure  
15 the appearance of the person for preliminary examination or trial:

16 (a) Place the person in the custody of a designated person or organ-  
17 ization agreeing to supervise such person;

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

20 (c) impose any other condition deemed reasonably necessary to as-  
21 sure appearance as required, including a condition requiring that the  
22 person return to custody during specified hours;

23 (d) place the person under a house arrest program pursuant to K.S.A.  
24 21-4603b, and amendments thereto; or

25 (e) place the person under the supervision of a court services officer  
26 responsible for monitoring the person's compliance with any conditions  
27 of release ordered by the magistrate.

28 (2) In addition to any conditions of release provided in subsection (1),  
29 for any person charged with a felony, the magistrate may order such  
30 person to submit to a drug abuse examination and evaluation in a public  
31 or private treatment facility or state institution and, if determined by the  
32 head of such facility or institution that such person is a drug abuser or  
33 incapacitated by drugs, to submit to treatment for such drug abuse, as a  
34 condition of release.

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

40 (4) A deposit of cash in the amount of the bond may be made in lieu  
41 of the execution of the bond pursuant to paragraph (3). Except as pro-  
42 vided in paragraph (5), such deposit shall be in the full amount of the  
43 bond and in no event shall a deposit of cash in less than the full amount

1 of bond be permitted. Any person charged with a crime who is released  
2 on a cash bond shall be entitled to a refund of all moneys paid for the  
3 cash bond, after deduction of any outstanding restitution, costs, fines and  
4 fees, after the final disposition of the criminal case if the person complies  
5 with all requirements to appear in court. The court may not exclude the  
6 option of posting bond pursuant to paragraph (3).

7 (5) Except as provided further, the amount of the appearance bond  
8 shall be the same whether executed as described in subsection (3) or  
9 posted with a deposit of cash as described in subsection (4). When the  
10 appearance bond has been set at \$2,500 or less and the most serious  
11 charge against the person is a misdemeanor, a severity level 8, 9 or 10  
12 nonperson felony, a drug severity level 4 felony or a violation of K.S.A.  
13 8-1567, and amendments thereto, the magistrate may allow the person  
14 to deposit cash with the clerk in the amount of 10% of the bond, provided  
15 the person meets at least the following qualifications:

- 16 (A) Is a resident of the state of Kansas;
- 17 (B) has a criminal history score category of G, H or I;
- 18 (C) has no prior history of failure to appear for any court appearances;
- 19 (D) has no detainer or hold from any other jurisdiction;
- 20 (E) has not been extradited from, and is not awaiting extradition to,  
21 another state; and
- 22 (F) has not been detained for an alleged violation of probation.

23 (6) In the discretion of the court, a person charged with a crime may  
24 be released upon the person's own recognizance by guaranteeing pay-  
25 ment of the amount of the bond for the person's failure to comply with  
26 all requirements to appear in court. The release of a person charged with  
27 a crime upon the person's own recognizance shall not require the deposit  
28 of any cash by the person.

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

30 (8) In determining which conditions of release will reasonably assure  
31 appearance and the public safety, the magistrate shall, on the basis of  
32 available information, take into account the nature and circumstances of  
33 the crime charged; the weight of the evidence against the defendant; the  
34 defendant's family ties, employment, financial resources, character, men-  
35 tal condition, length of residence in the community, record of convictions,  
36 record of appearance or failure to appear at court proceedings or of flight  
37 to avoid prosecution; the likelihood or propensity of the defendant to  
38 commit crimes while on release, including whether the defendant will be  
39 likely to threaten, harass or cause injury to the victim of the crime or any  
40 witnesses thereto; and whether the defendant is on probation or parole  
41 from a previous offense at the time of the alleged commission of the  
42 subsequent offense.

43 (9) The appearance bond shall set forth all of the conditions of

1 release.

2 (10) A person for whom conditions of release are imposed and who  
3 continues to be detained as a result of the person's inability to meet the  
4 conditions of release shall be entitled, upon application, to have the con-  
5 ditions reviewed without unnecessary delay by the magistrate who im-  
6 posed them. If the magistrate who imposed conditions of release is not  
7 available, any other magistrate in the county may review such conditions.

8 (11) A magistrate ordering the release of a person on any conditions  
9 specified in this section may at any time amend the order to impose  
10 additional or different conditions of release. If the imposition of additional  
11 or different conditions results in the detention of the person, the provi-  
12 sions of subsection (10) shall apply.

13 (12) Statements or information offered in determining the conditions  
14 of release need not conform to the rules of evidence. No statement or  
15 admission of the defendant made at such a proceeding shall be received  
16 as evidence in any subsequent proceeding against the defendant.

17 (13) The appearance bond and any security required as a condition  
18 of the defendant's release shall be deposited in the office of the magistrate  
19 or the clerk of the court where the release is ordered. If the defendant  
20 is bound to appear before a magistrate or court other than the one or-  
21 dering the release, the order of release, together with the bond and se-  
22 curity shall be transmitted to the magistrate or clerk of the court before  
23 whom the defendant is bound to appear.

24 (14) Proceedings before a magistrate as provided in this section to  
25 determine the release conditions of a person charged with a crime in-  
26 cluding release upon execution of an appearance bond may be conducted  
27 by two-way electronic audio-video communication between the defend-  
28 ant and the judge in lieu of personal presence of the defendant or de-  
29 fendant's counsel in the courtroom in the discretion of the court. The  
30 defendant may be accompanied by the defendant's counsel. The defend-  
31 ant shall be informed of the defendant's right to be personally present in  
32 the courtroom during such proceeding if the defendant so requests. Ex-  
33 ercising the right to be present shall in no way prejudice the defendant.

34 (15) The magistrate may order the person to pay for any costs asso-  
35 ciated with the supervision of the conditions of release of the appearance  
36 bond in an amount not to exceed \$10 per week of such supervision.

37 Sec. 9. K.S.A. 25-2416 is hereby amended to read as follows: 25-  
38 2416. (a) Voting without being qualified is knowingly and willfully: ~~(a)~~ (1)  
39 Voting or attempting to vote at any election when not a lawfully registered  
40 voter.

41 ~~(b)~~ (2) Voting or offering to vote more than once at the same election.

42 ~~(c)~~ (3) Inducing or aiding any person to vote more than once at the  
43 same election.

1     (4) *Inducing or aiding any person to vote who is not a lawfully reg-*  
2 *istered voter.*

3     (b) Voting without being qualified *pursuant to subsection (2) or (3)*  
4 *is a class A misdemeanor. Voting without being qualified pursuant to*  
5 *subsection (1) or (4) is a severity level 9, nonperson felony.*

6     Sec. 10. K.S.A. 21-3830, 22-2802 and 25-2416 are hereby repealed.

7     Sec. 11. This act shall take effect and be in force from and after its  
8 publication in the statute book.