

Date: February 15, 2012

To: Senate Federal and State Affairs Committee
Senator Pete Brungardt, Chairman

From: Allie Devine, Devine & Donley, LLC on behalf of the Kansas Business Coalition
and Kansans for Sensible Immigration Policy

RE: SB 399-Supporting the Kansas Business Workers and Community
Partnership Act

Chairman Brungardt and Members of the Committee. My name is Allie Devine and I am appearing on behalf of the Kansas Business Coalition and our client, Kansans for Sensible Immigration Policy (KSIP), a member of the coalition.

Immigration law in the United States is confusing, difficult, and controversial. Immigration issues have haunted the nation for decades. Today, we see governments at all levels struggle for a common sense, workable solution to address actual and perceived issues with immigration.

This week you will hear bills that present opposing policies for the management of immigration issues. In considering all of these proposals we ask that you please remember that immigration violations are "civil" matters, not criminal. Criminalizing violations of immigration laws comes at a high cost to local governments and taxpayers.

Second, please consider the impacts of any proposal on all regions of the state. Attached are maps that outline unemployment rates and the immigrant populations in Kansas. It is clear that some policies will disproportionately effect some counties.

SB 399 establishes the Kansas Business-Workforce-Communities Partnership Act which is designed to be a pro-business, pro-economic growth way to manage the issue of undocumented workers in Kansas.

SB 399 establishes a program that works with the current policies and authorities of the U.S Department of Homeland Security to manage undocumented workers without damaging the Kansas economy.

SB 399 establishes a self-funded program that does not impose expensive, job-killing regulations on businesses nor cost-prohibitive unfunded mandates on state and local governments.

The concept is simple. SB 399 creates a program wherein the state of Kansas identifies and supports aliens who pose no risk to the public; have been in Kansas for over 5 years; and who agree to work in industries that need workers. "Support" means that Kansas will send documentation to the federal government that bolsters the application of the alien to remain in Kansas. SB 399 provides a method for the state to work within the existing immigration system to support these applicants. The program is voluntary. No one will be forced to participate. This is not an amnesty, waiver, or path to citizenship program.

We believe SB 399 provides a system that will improve the lives of aliens and their families; provide businesses with a lawful workforce; provide funding for programs that serve immigrants; and give Kansas an economic advantage to grow the economy.

Section by Section Analysis:

Section 1 contains definitions.

Section 2 of the bill outlines key goals of the program:

1. **Facilitate information sharing between the federal government, state, businesses, workers, and communities.** Data sharing between entities will assist in the identification of criminals, employers who are not complying with employment laws, tracking of persons present on limited status and employment needs to help grow the state's economy.
2. **Reduce costs associated with detaining undocumented persons.** The federal government has prioritized its deportation efforts to "high priority" individuals (felons, drug dealers, threats to national security or public safety, and repeat violators of immigration laws). "Low priority" cases are being considered for discretionary action which allows the individual to remain in the United States. Under the bill, persons considered a low priority for deportation would not be detained but would be encouraged to enter the program. This would save taxpayers the costs of detainment and deportation.
3. **Increasing public safety:** Under the program, aliens would be required to submit to background checks and complete all of the basic filings required for lawful presence in the United States. Kansas county data bases are connected to these systems. This means that criminals or persons sought by police will be detected. The bill also provides that program participants will be eligible for a Kansas driver's license and be compliant with Kansas laws. Furthermore, an immigrant population that does not fear deportation is more likely to report crimes and cooperate with authorities.

4. **Providing a lawful workforce:** In some areas of the state and in some industries, recruiting and maintaining a lawful workforce is difficult. When an employer learns of the unlawful status of a worker, they are required to terminate the employment relationship. This program gives an employee a method to obtain lawful status.
5. **Assist local communities:** The fees generated through this program will be used to fund grants to community and faith based organizations serving the needs of immigrants.

Section 3(a) outlines the authority of the Kansas Secretary of Labor to support the application of an eligible undocumented alien to obtain lawful status and work authorization. In short, the applicant who meets the requirements of section 4 will get a letter or some form of documentation from the state of Kansas affirming that Kansas wants this person to remain in the state.

This documentation is valuable to the applicant because the federal government has set forth criteria by which prosecutors should use to evaluate a deportation case. For example, one of the criteria is whether the applicant has “established ties and contributions to the community.” What could be better evidence of ties to the community than a letter of support from the state of Kansas illustrating the person’s background and commitment to work? There is other criteria to which the state may assist the applicant in providing documentation.^{1, 2}

Section 3(b) of the bill provides that the Secretary of Labor certify industries in need of workers. This section incorporates aspects of federal law that allow guest workers only in industries that have difficult recruiting workers. This program will not be used to undercut existing employment markets.

Section 3(c) provides the authority for the Secretary to accept applications from employers who wish to participate in the program.

¹ “‘Prosecutorial Discretion’ is the authority of an agency or officer to decide what charges to bring and how to pursue each case. A law-enforcement officer who declines to pursue a case against a person has *favorably* exercised prosecutorial discretion. The authority to exercise discretion in deciding when to prosecute and when not to prosecute based on a priority system has long been recognized as a critical part of U.S. law. The concept of prosecutorial discretion applies in civil, administrative, and criminal contexts. The Supreme Court has made it clear that ‘an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.’ Heckler v. Chaney 470 U.S. 821, 831 (1985).” American Immigration Council: Immigration Policy Center, *Understanding Prosecutorial Discretion in Immigration Law*, <http://www.immigrationpolicy.org/just-facts/understanding-prosecutorial-discretion-immigration-law> (Updated September 9, 2011).

² See John Morton, Director of Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for Apprehension, Detention, and Removal of Aliens* (June 17, 2011).

Section 3(d) requires the Secretary to annually report to the legislature on the progress of the program.

Section 4 outlines the eligibility requirements for aliens to participate in the program.

Section 4(a)(1) requires the person to complete fingerprinting and biometric background checks. These provisions are required by the federal government when an individual makes an application for lawful presence and work authorization. The federal government requires the completion of several documents which may include a Form 1-131 (application for travel); Form I-765 (application for employment authorization); Form I-693 (report of medical examination and vaccination record) and testing fees; and the biometrics testing. The combined fees of these filings equal \$975.00 and are required to be paid to the federal government each time an applicant seeks renewal. No other fees are required of the program applicant.

Section 4(a)(2) reaffirms that a program participant cannot have committed two or more misdemeanors or a felony. Again, this provision is consistent with the federal government's prioritization of who is or is not a "high priority case for deportation."³

Section 4(a)(3) requires that an applicant offer evidence of presence in Kansas for over 5 years. This provision is designed to assure that Kansas does not have an influx of persons from other states to participate in the program. There is an exception for persons who relocated to Kansas with a business.

Section 4(a)(4) requires the applicant to agree to work with a participating employer upon gaining work authorization.

Section 4(a)(5) requires the applicant to work toward English proficiency. Again, there is a strong desire on the part of the coalition that program participants assimilate into communities.

Section 4(b) outlines that a program participant may obtain a Kansas driver's license. The license issued would be a "limited term" license. The term of the driver's license would be the same as the term of work authorization. These types of licenses are issued today by the Kansas Department of Revenue.

Section 4(c)(1) provides that if a program participant's employment is terminated for cause, the person will not be eligible for unemployment benefits. The program requires the participant to gain employment. If the program participant does not comply with the terms of the program, Kansas will not support their renewal

³ *Id.*

applications. Section 4(c)(2) provides that if a program participant's employment is terminated because the employer has been disqualified from the program, the participant must seek employment as soon as practicable.

Section 5 provides that the Secretary may support the application of a program participant spouse or dependent child under the age of 21 to gain lawful presence. Again, the bill seeks to be consistent with the policy of the Department of Homeland Security to keep families together.

Section 6 (a) outlines the requirements for an employer to participate in the program. Key provisions include payment of a registration fee; compliance with federal fair labor standards act; completion of training and reporting requirements; provision of benefits to the program participant like all other employees.

Section 6(b) outlines the provisions for the Secretary to approve or disapprove employers. The Secretary is also authorized to assess civil penalties for noncompliance.

Section 6(c) provides that an employer may not be criminally prosecuted for actions arising out of the past employment of a person who participates in the program. This provision is necessary to encourage employers and workers to come into the system.

Section 7 provides the Secretary with the authority to qualify community and faith based organizations for grant monies to implement programs to assist immigrants such as English language classes.

Section 8 provides the Secretary with rule and regulation authority.

Section 9 authorizes the Secretary to work with other states, governmental or private entities to implement the program.

Section 10 authorizes the Secretary or her agent to enter a premise to inspect records, interview employees, or others to assure compliance with the program.

Section 11 creates a fee fund for the collection and distribution of fees generated by the program.

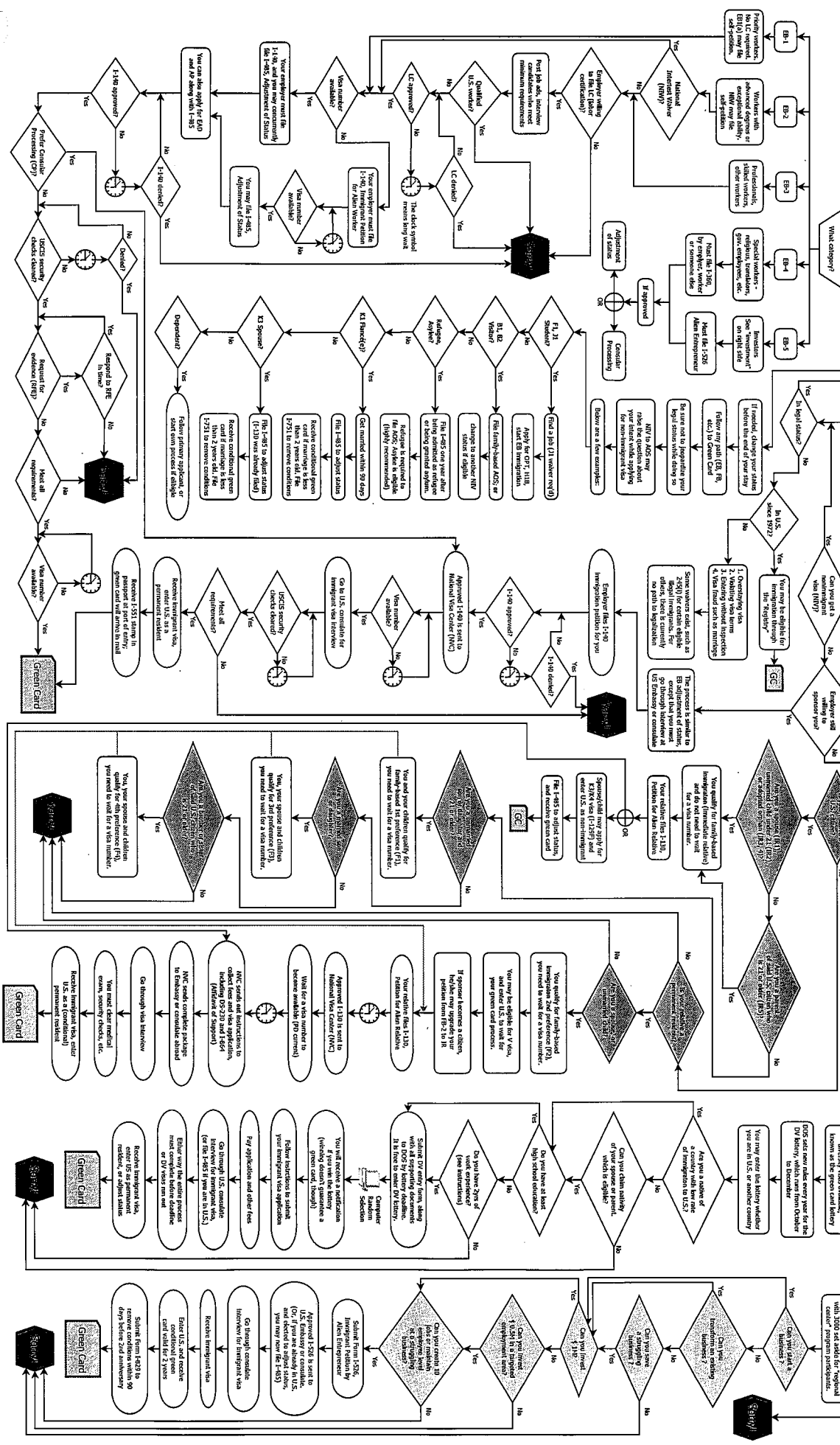
Section 12 outlines the title of the act.

Section 13 establishes an effective date of the law as January 1, 2013.

Immigration Roadmap

- Find Your Way to green card

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