

HOUSE BILL No. 2492

By Committee on Federal and State Affairs

1-19

1 AN ACT concerning the e-verify program and the use thereof by business
2 and governmental entities; penalties.

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

5 Section 1. (a) As a condition for the award of any contract or grant
6 in excess of \$5,000 by a governmental entity to a business entity, the
7 business entity shall, by provision of a signed e-verify program
8 memorandum of understanding, by sworn affidavit signed before a notary
9 and by provision of documentation, affirm its enrollment and good faith
10 participation in the e-verify program with respect to all new employees
11 eligible for verification under the e-verify program, working in connection
12 with the contracted services.

13 (b) All public employers, including any governmental entity, shall
14 enroll and participate in good faith in the e-verify program.

15 (c) A general contractor or subcontractor of any tier shall not be liable
16 under this section when such general contractor or subcontractor contracts
17 with its direct subcontractor who violates subsection (a), if the contract
18 binding the contractor and subcontractor affirmatively states that the direct
19 subcontractor is not knowingly in violation of subsection (a) and shall not
20 henceforth be in such violation and the contractor or subcontractor acts in
21 good faith to obtain a sworn affidavit signed before a notary attesting to
22 the fact that the direct subcontractor is enrolled and participates in good
23 faith in the e-verify program with respect to all new employees eligible
24 for verification under the e-verify program, working in connection with the
25 contracted services.

26 (d) In addition to any other provision of law, any business entity
27 violating the provisions of subsection (a) requiring that such business
28 entity affirm its enrollment and good faith participation in the e-verify
29 program with respect to all new employees eligible for verification under
30 the e-verify program and working in connection with the contracted
31 services shall be deemed in breach of contract and the governmental entity
32 may terminate the contract and, upon notice and opportunity to be heard,
33 suspend or debar the business entity from doing business with the
34 governmental entity:

35 (1) Upon a first violation, for a period of up to three years, and upon
36 any contract termination, the governmental entity may, in addition to such

1 other remedies as may be provided by law, withhold from amounts due or
2 recover as liquidated damages up to 5% of the total amount of the contract
3 with the business entity; and

4 (2) upon a second or subsequent violation, for a period of not less
5 than three years, and upon any contract termination, the governmental
6 entity may, in addition to such other remedies as may be provided by law,
7 withhold from amounts due or recover as liquidated damages up to 10% of
8 the total amount due to the business entity.

9 (e) In any civil action undertaken by any governmental entity or any
10 business entity to enforce rights and remedies under this section, the
11 prevailing party shall be awarded its costs to include reasonable attorney
12 fees associated with such action.

13 (f) Any business entity covered under this section which terminates
14 an employee pursuant to a notification that such employee is not
15 authorized to work in the United States, pursuant to that business entity's
16 participation in the e-verify program, shall not be liable for any claims
17 made against the business entity under the laws of the state of Kansas
18 alleging that such termination was wrongful.

19 (g) As used in this section:

20 (1) "Business entity" means any business that employs one or more
21 employees.

22 (2) "E-verify program" means a program operated by the United
23 States department of homeland security pursuant to the illegal immigration
24 reform and immigrant responsibility act of 1996, public law 104-208, or a
25 successor electronic federal work authorization program.

26 (3) "Good faith" means, with honesty and intent, to fully comply with
27 all applicable laws, rules and regulations and standards. A business entity
28 shall not be deemed to have violated the requirements of good faith based
29 on inadvertent errors committed by subordinate personnel and unknown to
30 the principals of the business entity when made.

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

33 (h) If any provision of this section is held to be unconstitutional under
34 the United States or Kansas constitutions, that provision shall be severed
35 from this section, and the other provisions of the section shall remain valid
36 and in effect.

37 Sec. 2. This act shall take effect and be in force from and after its
38 publication in the statute book.

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