

SB 6

Bill Number: [SB 6\(BR-45\)/LM/CI](#)(click bill number to view bill details.)

Title: AN ACT relating to unauthorized aliens.

Sponsor(s): Schickel , John
Smith , Brandon

Current Status: passed 24-14 with Committee Substitute
In Senate

Summary: Create new sections of KRS Chapter 432 to define terms; set out the intent of the chapter and prevent the adoption of policies, administrative regulations, or laws that restrict the enforcement of federal immigration laws; allow for determining the immigration status of a person on reasonable suspicion, the arrest of an unlawful alien upon probable cause, and the transference of a convicted unlawful alien to the United States Immigration and Customs Enforcement or the United States Customs and Border Protection; specify that officials or agencies may not be prohibited from sharing the immigration status of a person under specific instances; indemnify a governmental law enforcement officer where the officer has been brought into a legal action; make it a Class D felony to intentionally smuggle persons for profit or commercial purposes, a Class B felony if the smuggled person is under 18 or the offense involved a deadly weapon, or a Class C felony if serious physical injury is used or threatened; define trespassing by an unauthorized alien in the first degree and set out the penalties for conviction; make it a Class A misdemeanor for a person to transport or conceal unauthorized aliens, or encourage an unauthorized alien to come to this state; amend KRS 186A.320 to include motor vehicles used in violation of Section 8 of this Act in the impoundment procedures.

Amendments

[SCS/LM/CI](#) - Clarify definition of unauthorized alien as an alien who does not have legal authorization to enter, be in, or remain in the United States; delete reference to other government agencies in law enforcement questioning of suspected unauthorized aliens; require an unauthorized alien to have been arrested prior to being turned over to federal authorities; clarify that a convicted unauthorized alien not be released to federal government until after serving any sentence whether or not a fine has been imposed; clarify definition of "terrorism" to include domestic and international terrorism; change crime of assisting an illegal alien to assisting an

unauthorized alien; clarify procedure for seizing means of transportation and forfeiture procedures for offenses relating to assisting an unauthorized alien; provide defense for employer of unauthorized alien who has relied on identification documents or Federal E-Verify results; remove provision relating to amendment of KRS 186A.320; make various technical and reference changes.

SFA1 (Palmer II, R.J.) - Replace provisions of the bill with new provisions that would create a new section of KRS Chapter 45A to define terms relating to bill; create a new section of KRS Chapter 45A relating to public agencies to require use of federal employment verification programs and prohibit hiring unauthorized aliens; create a new section of KRS Chapter 45A to require all contractors and subcontractors with public agencies to use federal employment verification programs, not hire unauthorized aliens, and provide sworn affidavits of compliance; create a new section of KRS Chapter 45A to provide for civil enforcement and canceling of contracts; permit courts to enjoin violations; require suspension from further public agency contracts for 5 years if employer is found to have hired unauthorized aliens.

SFA2 (Palmer II, R.J.) - Replace provisions of the bill with new provisions that would create a new section of KRS Chapter 45A to define terms relating to bill; create a new section of KRS Chapter 45A relating to public agencies to require use of federal employment verification programs and prohibit hiring unauthorized aliens; create a new section of KRS Chapter 45A to require all contractors and subcontractors with public agencies to use federal employment verification programs, not hire unauthorized aliens, and provide sworn affidavits of compliance; create a new section of KRS Chapter 45A to provide for civil enforcement and canceling of contracts; permit courts to enjoin violations; require suspension from further public agency contracts for 5 years if employer is found to have hired unauthorized aliens.

AN ACT relating to unauthorized aliens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→SECTION 1. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context requires otherwise:

(1) "Alien" means a person who is not a citizen of the United States;

(2) "Family member" means the person's parent, grandparent, sibling, or any other person

who is related to the person by consanguinity or affinity to the second degree;

- (3) "Government" or "governmental" means the Kentucky state government or any city, county, charter county, urban-county government, unified local government, or consolidated local government;
- (4) "Law enforcement official" means any governmental elected or nonelected person who possesses the powers of a peace officer;
- (5) "Procurement of transportation" means any participation in or facilitation of transportation and includes:
- (a) Providing services that facilitate transportation, including travel arrangement services or money transmission services; and
- (b) Providing property that facilitates transportation, including a weapon, a vehicle or other means of transportation, false identification, or selling, leasing, renting, or otherwise making available a location at which a person may go to be smuggled;
- (6) "Smuggle" or "smuggling" means the transportation, procurement of transportation, or use of personal or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens, or persons otherwise lawfully in this state or who have attempted to enter, entered, or remained in the United States in violation of law;
- (7) "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to enter, be in, or remain in the United States.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ AS FOLLOWS:

- (1) Sections 1 to 8 of this Act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.
- (2) No governmental official or agency may adopt a policy, ordinance, resolution, administrative regulation under KRS Chapter 13A, or law that limits or restricts the

enforcement of federal immigration laws to less than the full extent permitted by federal law.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ AS FOLLOWS:

(1) For any lawful contact made by a governmental law enforcement official where reasonable suspicion exists that a person is an unauthorized alien, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. The person's immigration status shall be verified with the federal government under 8 U.S.C. sec. 1373.

(2) A governmental law enforcement officer may, without a warrant, arrest a person if the officer has probable cause to believe that the person has committed any crime that makes the person removable from the United States.

(3) Notwithstanding any other law to the contrary, a governmental law enforcement agency may securely transport an unauthorized alien who has been arrested to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the governmental law enforcement agency.

(4) If an unauthorized alien is convicted of a violation of state or local law, on discharge from imprisonment if the unauthorized alien has been sentenced to imprisonment or assessment of any fine that is imposed against the alien for an offense for which the alien was not imprisoned, the unauthorized alien shall be transferred immediately to the custody of the United States Immigration and Customs Enforcement or the United States Customs and Border Protection, or their successor agencies. If the unauthorized alien has been sentenced to both a fine and imprisonment for one (1) or more offenses arising from the same incident or series of related incidents the assessment of the fine shall not cause the transfer of the alien until service of all sentences of imprisonment which have been imposed.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ

AS FOLLOWS:

Except as provided in federal law, governmental officials or agencies may not be prohibited, or in any way restricted, from sending, receiving, or maintaining information relating to the immigration status of any person, or exchanging that information with any other federal, state, or local governmental entity for the following purposes:

- (1) Determining eligibility for any public benefit, service, or license provided by any government or the federal government;
- (2) Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state;
- (3) Confirming the identity of any person who is detained; and
- (4) If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by Title II, Chapter 7 of the federal Immigration and Nationality Act.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ

AS FOLLOWS:

A governmental law enforcement officer shall be indemnified by the governmental law enforcement agency employing the law enforcement officer against reasonable costs and expenses, including attorneys fees, incurred by the officer in connection with any action, suit, or proceeding brought under Sections 1 to 8 of this Act to which the officer may be a party by reason of the officer being or having been a member of the governmental law enforcement agency, except in matters in which the officer is adjudged to have acted in bad faith.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ

AS FOLLOWS:

- (1) A person is guilty of smuggling persons for profit or commercial purpose when he or she smuggles a person for remuneration.
- (2) A violation of this section is a Class D felony, except that a violation of this section is:

(a) A Class B felony if:

1. The person who is smuggled is under eighteen (18) years of age and is not accompanied by a family member over eighteen (18) years of age; or
2. The offense involved the use of a deadly weapon or dangerous instrument as defined in KRS 500.080; or

(b) A Class C felony if the offense involves the use or threatened use of serious physical injury as defined in KRS 500.080.

(3) A person convicted under subsection (1) of this section shall serve his or her entire sentence and is not eligible for suspension of sentence, probation, shock probation, conditional discharge, parole, or any other form of early release from confinement under KRS 197.045 or any other statute.

(4) A person charged under subsection (1) of this section shall not be eligible for pretrial diversion.

(5) A governmental law enforcement official may lawfully stop any person who is operating a motor vehicle if the official has reasonable suspicion to believe the person is in violation of any civil traffic law and this section.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ AS FOLLOWS:

(1) In addition to any violation of federal law, a person is guilty of trespassing by an unauthorized alien in the first degree if the person:

- (a) Is present on any public or private land in this state; and
- (b) Is in violation of 8 U.S.C. sec. 1304(e) or 1306(a).

(2) In the enforcement of this section, the final determination of an alien's immigration status, which shall be rebuttable by competent evidence, shall be determined by:

- (a) A governmental law enforcement official who is authorized by the federal government to verify or ascertain an alien's immigration status and who has verified the defendant's immigration status with the federal government; or

- (b) A governmental law enforcement official or agency communicating with the United States Immigration and Customs Enforcement or the United States Border Protection or their successor agencies pursuant to 8 U.S.C. sec. 1373.
- (3) Other than allowed by the Kentucky Constitution, a person who is sentenced pursuant to this section is not eligible for suspension or commutation of sentence or release on any basis until the sentence imposed is served.
- (4) In addition to any other penalty prescribed by law, the court shall order the person convicted under subsection (1) of this section to pay jail costs and an additional assessment in the following amounts:
- (a) Five hundred dollars (\$500) for a first violation; and
- (b) One thousand dollars (\$1,000) for a second or subsequent violation.
- (5) This section does not apply to a person who maintains authorization from the federal government to remain in the United States.
- (6) Trespassing by an unauthorized alien in the first degree is a Class A misdemeanor, except that a violation of this section is:
- (a) A Class D felony if the person violates this section while in possession of any of the following:
1. A controlled substance as defined in KRS 218A.010 without a valid prescription;
 2. A deadly weapon or dangerous instrument as defined in KRS 500.080; or
 3. Property that is used for the purpose of committing an act of international terrorism or domestic terrorism as defined in 18 U.S.C. sec. 2331; or
- (b) A Class C felony if the person:
1. Is convicted of a second or subsequent violation of this section; or
 2. Within sixty (60) months before the violation, has been removed from the United States under 8 U.S.C. sec. 1229, or has accepted a voluntary removal from the United States pursuant to 8 U.S.C. sec. 1229.

→SECTION 8. A NEW SECTION OF KRS CHAPTER 432 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of assisting an unauthorized alien when he or she:

(a) Transports, moves, or attempts to transport or move, an unauthorized alien in a means of transportation, or participates in the procurement of transportation for an unauthorized alien, if the person knows or recklessly disregards the fact that the unauthorized alien has come to, entered, or remains in the United States in violation of law;

(b) Conceals, harbors, shields, or attempts to conceal, harbor, or shield an unauthorized alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the unauthorized alien has come to, entered, or remains in the United States in violation of law; or

(c) Encourages or induces an unauthorized alien to come to, or reside in, this state if the person knows or recklessly disregards the fact that such coming to, entering, or residing in this state is, or will be, in violation of law.

(2) A means of transportation that is used in the commission of a violation of this section shall be seized by the arresting officer and forfeited to the state upon conviction subject to the provisions of KRS 500.090. A means of transportation seized pursuant to this section shall be returned to an innocent lawful owner prior to trial upon motion and proper proof by the lawful owner or the lawful owner's representative to the court in which the case is to be tried or upon motion of the court.

(3) A person who violates this section shall be guilty of a Class A misdemeanor, except that a violation of this section that involves ten (10) or more unauthorized aliens shall be a Class D felony and, for fine purposes only, the fine shall apply to each unauthorized alien.

(4) In addition to the penalties specified in subsection (3) of this section, the person shall be

subject to paying the additional assessment described in subsection (4) of Section 7 of this Act.

(5) The provisions of this section shall not apply to an employer of an unauthorized alien who reasonably believed that the person was not an unauthorized alien because the employer relied:

(a) On what appeared to be a valid authorization to work in the United States; or

(b) Upon an authorization obtained through the use of the Federal E-Verify system.