

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 85**  
**94TH GENERAL ASSEMBLY**

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Reported from the Special Committee on Immigration March 1, 2007 with recommendation that House Committee Substitute for House Bill No. 85 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

Relating to employment of illegal aliens, with a penalty provision and an effective date.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

**Section 1. As used in sections 1 to 3 of this act, the following terms shall have the following meanings:**

**(1) "Basic pilot program", the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Title IV, Subtitle A, Section 403(a) (8 U.S.C. 1324a note), as amended and operated by the United States Department of Homeland Security or its successor program;**

**(2) "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. The term business entity shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term business entity shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term business entity shall not include a self-employed individual with no employees;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           (3) "Contractor", a person, employer, or business entity that enters into an  
18 agreement to perform any service or work or to provide a certain product in exchange for  
19 valuable consideration. This definition shall include but not be limited to a subcontractor,  
20 independent contractor, contract employee, or a recruiting or staffing entity;

21           (4) "Department", the department of labor and industrial relations;

22           (5) "Employee", any person performing or applying for work or service of any  
23 kind or character for hire;

24           (6) "Employer", any person employing or seeking to employ any person for hire.  
25 Where there are two or more putative employers, any person or entity taking a business  
26 tax deduction for the employee in question shall be considered an employer of that person  
27 for purposes of sections 1 to 3 of this act;

28           (7) "Employment", the act of employing or state of being employed, engaged, or  
29 hired;

30           (8) "Illegal alien", an alien who is not lawfully present in the United States,  
31 according to the terms of 8 U.S.C. 1101, et seq. The state of Missouri shall not conclude  
32 that a person is an illegal alien unless and until an authorized representative of the state  
33 of Missouri has verified with the federal government, under 8 U.S.C. 1373(c), that the  
34 person is an alien who is not lawfully present in the United States;

35           (9) "Law enforcement", any peace officer as defined in section 590.010, RSMo;

36           (10) "Law enforcement agency", any agency employing law enforcement officers;

37           (11) "Unauthorized alien", an alien who does not have the legal right or  
38 authorization under federal law to work in the United States, as defined by 8 U.S.C.  
39 1324a(h)(3);

40           (12) "Work", any job, task, employment, labor, personal services, or any other  
41 activity for which compensation is provided, expected, or due, including but not limited to  
42 all activities conducted by business entities.

Section 2. 1. It is unlawful for any business entity to employ, recruit, hire for  
2 employment, or continue to employ an unauthorized alien to perform work within the state  
3 of Missouri.

4           2. As a condition for the award of any state contract or grant to a business entity,  
5 or for any business entity using state resources, the business entity shall, by sworn affidavit  
6 and provision of documentation, affirm its enrollment and participation in the basic pilot  
7 program. Every business entity shall also sign an affidavit affirming that it does not  
8 knowingly employ any person who is an unauthorized alien.

9           3. All state employers shall enroll and actively participate in the basic pilot  
10 program.

11           **4. An employer participating in the basic pilot program shall verify the employment**  
12 **eligibility of every employee in the employer's hire whose employment commences after the**  
13 **employer enrolls in the basic pilot program.**

14           **5. Compensation, whether in money or in kind or in services, provided to any**  
15 **unauthorized alien shall not be allowed as a business expense deduction from any income**  
16 **or business taxes of this state.**

17           **6. Any business entity operating in this state in violation of sections 2 and 3 of this**  
18 **act, shall have its certificates of incorporation, or other pertinent state business licenses or**  
19 **registrations, suspended after written notice by the department of pending suspension and**  
20 **the tolling of a ninety-day period, during which such entity shall have opportunity to**  
21 **challenge the suspension or remedy the violation under section 3 of this act.**

**Section 3. 1. The department shall enforce the requirements of sections 1 to 3 of**  
2 **this act.**

3           **2. An enforcement action shall be initiated by means of a written, signed complaint**  
4 **to the department submitted by any state official, business entity, or state resident. A valid**  
5 **complaint shall include an allegation which describes the alleged violator as well as the**  
6 **actions constituting the violation, and the date and location where such actions occurred.**

7           **3. A complaint which alleges a violation solely or primarily on the basis of national**  
8 **origin, ethnicity, or race shall be deemed invalid and shall not be enforced.**

9           **4. Upon receipt of a valid complaint, the department shall, within ten business days,**  
10 **request identity information from the business entity regarding any persons alleged to be**  
11 **unauthorized aliens. The department shall direct the secretary of state to suspend the**  
12 **business license of, and the secretary of state shall direct the applicable municipal or**  
13 **county governing body to suspend any applicable license of any business entity which fails,**  
14 **within ten business days after receipt of the request, to provide such information.**

15           **5. The department, after receiving the requested identity information from the**  
16 **business entity, shall submit identity data required by the federal government to verify,**  
17 **under 8 U.S.C. 1373, the immigration status of such persons, and shall provide the business**  
18 **entity with written confirmation of that verification.**

19           **6. The secretary of state shall direct the applicable municipal or county governing**  
20 **body to suspend the business permit and any applicable licenses or exemptions of any**  
21 **business entity which fails to correct a violation of sections 2 and 3 of this act, within ten**  
22 **business days after notification of the violation by the department.**

23           **7. The correction of a violation with respect to the employment of an unauthorized**  
24 **alien shall include any of the following actions:**

25           **(1) The business entity terminates the unauthorized alien's employment;**

26           (2) The business entity, after acquiring additional information from the employee,  
27 requests a secondary or additional verification by the federal government of the employee's  
28 authorization, under the procedures of the basic pilot program. While this verification is  
29 pending, the ten business day period referenced in subsection 6 of this section shall be  
30 tolled;

31           (3) The business entity attempts to terminate the unauthorized alien's employment  
32 and such termination is challenged in a court of the state of Missouri. While the business  
33 entity pursues the termination of the unauthorized alien's employment in such forum, the  
34 ten business day period referenced in subsection 6 of this section shall be tolled.

35           8. A business entity is not in violation of this section if, prior to the date of the  
36 violation, the business entity had verified the work authorization of the alleged  
37 unauthorized alien using the basic pilot program.

38           9. The suspension of a business license or licenses under this section shall terminate  
39 one business day after a legal representative of the business entity submits, at an office  
40 designated by the department, a sworn affidavit stating that the violation has ended.

41           (1) The affidavit shall include a description of the specific measures and actions  
42 taken by the business entity to end the violation, and shall include the name, address and  
43 other adequate identifying information for any unauthorized aliens related to the  
44 complaint.

45           (2) Where two or more of the alleged unauthorized aliens were verified to be  
46 unauthorized aliens, the legal representative of the business entity shall submit to the  
47 department, in addition to the prescribed affidavit, documentation acceptable to the  
48 department which confirms that the business entity has enrolled in and is participating in  
49 the basic pilot program.

50           10. For a second or subsequent violation, the secretary of state shall direct the  
51 applicable municipal or county governing body to suspend the business permit and any  
52 applicable license or exemptions of the business entity for a period of ten days. After the  
53 end of the suspension period, and upon receipt of the prescribed affidavit, the secretary of  
54 state shall reinstate the business permit and any applicable license or exemptions. The  
55 department shall forward the affidavit, complaint, and associated documents to the Bureau  
56 of Immigration and Customs Enforcement of the United States Department of Homeland  
57 Security.

58           11. Any city or county governing body in the state of Missouri that fails to comply  
59 with this section and directives from the secretary of state regarding the failure of any  
60 business to enroll in the basic pilot program, shall be ineligible for state funding.

61       **12. Sections 1 to 3 of this act shall not be construed to deny any procedural**  
62 **mechanisms included in the basic pilot program.**

63       **13. Any business entity subject to a complaint and subsequent enforcement under**  
64 **this section, or any employee of such a business entity, may challenge the enforcement of**  
65 **this section with respect to such entity or employee in the courts of the state of Missouri.**

66       **14. The determination of whether a worker is an unauthorized alien shall be made**  
67 **by the federal government, under 8 U.S.C. 1373(c). A determination of such status of an**  
68 **individual by the federal government shall create a rebuttable presumption as to that**  
69 **individual's status in any judicial proceedings brought under sections 2 and 3 of this act.**  
70 **The court may take judicial notice of any verification of an individual's status previously**  
71 **provided by the federal government and may request the federal government to provide**  
72 **automated or testimonial verification under 8 U.S.C. 1373(c).**

73       **15. (1) A general contractor will not be held liable under this section if:**

74       **(a) The general contractor verifies that all subcontractors and independent**  
75 **contractors hired by the general contractor have enrolled with the basic pilot program;**  
76 **and**

77       **(b) The general contractor reasonably believes that the subcontractors and**  
78 **independent contractors hired by the general contractor have complied with this section.**

79       **(2) If a general contractor fails to comply with either of the provisions in subsection**  
80 **1 of this section, he or she may be found liable for all violations of any subcontractor or**  
81 **independent contractor under the employ of the general contractor.**

82       **16. If the federal government notifies the department that it is unable to verify**  
83 **whether an employee is authorized to work in the United States, the department shall take**  
84 **no further action on the complaint until a verification from the federal government**  
85 **concerning the status of the individual is received. At no point shall any state official**  
86 **attempt to make an independent determination of any alien's legal status without**  
87 **verification from the federal government under the 8 U.S.C. 1373(c).**

88       **Section B. The provisions of sections 1, 2, and 3, of this act shall take effect on January**  
89 **1, 2008.**

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