

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR
HOUSE BILL NO. 85
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Immigration March 30, 2007 with recommendation that House Committee Substitute No. 2 for House Bill No. 85 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0571L.07C

AN ACT

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

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) "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;

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

(3) "Division", the division of labor standards within the department of labor and industrial relations;

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.

18 (4) "Employee", any person performing or applying for work or service of any
19 kind or character for hire within the state of Missouri;

20 (5) "Employer", any person employing or seeking to employ any person for hire
21 within the state of Missouri. Where there are two or more putative employers, any person
22 or entity taking a business tax deduction for the employee in question shall be considered
23 an employer of that person for purposes of sections 1 to 3 of this act;

24 (6) "Employment", the act of employing or state of being employed, engaged, or
25 hired to perform work or service of any kind or character within the state of Missouri;

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

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

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

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

Section 2. 1. No business entity shall employ, recruit, hire for employment, or
2 continue to employ an unauthorized alien to perform work within the state of Missouri.

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

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

11 4. An employer may enroll and participate in the employment eligibility
12 verification/basic pilot program and such participating employer shall verify the

13 employment eligibility of every employee in the employer's hire whose employment
14 commences after the employer enrolls in the employment eligibility verification/basic pilot
15 program. Any business entity that participates in such program shall have an affirmative
16 defense that such business entity has not violated the provisions of sections 2 and 3 of this
17 act, unless it is proven by clear and convincing evidence that the business entity had actual
18 knowledge of the unauthorized status of the employee under the Immigration Reform and
19 Control Act of 1986 (8 U.S.C. 1324a), or its successor.

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

3 2. An enforcement action shall be initiated by means of a written, signed complaint
4 to the division 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 A complaint which alleges a violation solely or primarily on the basis of national origin,
8 ethnicity, or race shall be deemed invalid and shall not be enforced.

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

16 4. The division, after receiving the requested identity information from the business
17 entity, shall submit identity data required by the federal government to verify, under 8
18 U.S.C. 1373, the immigration status of such persons, and shall provide the business entity
19 with written notice of the results of the verification request:

20 (1) If the federal government notifies the division that an employee is authorized
21 to work in the United States, the division shall take no further action on the complaint;

22 (2) If the federal government notifies the division that an employee is not
23 authorized to work in the United States, the division shall proceed on the complaint as
24 provided in subsection 5 of this section;

25 (3) If the federal government notifies the division that it is unable to verify whether
26 an employee is authorized to work in the United States, the division shall take no further
27 action on the complaint until a verification from the federal government concerning the
28 status of the individual is received. At no point shall any state official attempt to make an

29 independent determination of any alien's legal status without verification from the federal
30 government under 8 U.S.C. 1373(c).

31 5. (1) If the federal government notifies the division that an employee is not
32 authorized to work in the United States, and the employer of the unauthorized alien
33 participates in the employment eligibility verification/basic pilot program, there shall be
34 a rebuttable presumption that the employer has met the requirements for an affirmative
35 defense under subsection 4 of section 2 of this act, and the employer shall comply with
36 subsection 6 of this section.

37 (2) If the federal government notifies the division that an employee is not
38 authorized to work in the United States, and the employer of the unauthorized alien does
39 not participate in the employment eligibility verification/basic pilot program, the division
40 shall, after notice and a hearing, determine whether the business entity knowingly violated
41 sections 2 and 3 of this act:

42 (a) If the division finds that a business entity did not knowingly violate this act, the
43 employer shall comply with subsection 6 of this section;

44 (b) If the division finds that a business entity knowingly violated this act, the
45 division shall direct the secretary of state to suspend the business license of, and the
46 secretary of state shall direct the applicable municipal or county governing body to
47 suspend the business permit and any applicable licenses or exemptions of any business
48 entity which fails to correct a violation of sections 2 and 3 of this act, within ten business
49 days after notification of the violation by the division.

50 6. The correction of a violation with respect to the employment of an unauthorized
51 alien shall include the following actions:

52 (1) (a) The business entity terminates the unauthorized alien's employment. If the
53 business entity attempts to terminate the unauthorized alien's employment and such
54 termination is challenged in a court of the state of Missouri, the ten business day period
55 referenced in subsection 5 of this section shall be tolled while the business entity pursues
56 the termination of the unauthorized alien's employment in such forum; or

57 (b) The business entity, after acquiring additional information from the employee,
58 requests a secondary or additional verification by the federal government of the employee's
59 authorization, under the procedures of the employment eligibility verification/basic pilot
60 program. While this verification is pending, the ten business day period referenced in
61 subsection 5 of this section shall be tolled; and

62 (2) A legal representative of the business entity submits, at an office designated by
63 the division, a sworn affidavit stating that the violation has ended:

64 (a) The affidavit shall include a description of the specific measures and actions
65 taken by the business entity to end the violation, and shall include the name, address, and
66 other adequate identifying information for any unauthorized aliens related to the
67 complaint;

68 (b) When two or more of the alleged unauthorized aliens were verified to be
69 unauthorized aliens, the legal representative of the business entity shall submit to the
70 division, in addition to the prescribed affidavit, documentation acceptable to the division
71 which confirms that the business entity has enrolled in and is participating in the
72 employment eligibility verification/basic pilot program.

73 7. The suspension of a business license or licenses under subsection 5 or 8 of this
74 section shall terminate one business day after a legal representative of the business entity
75 submits the affidavit and other documentation required under subsection 6 of this section.

76 8. For a second or subsequent violation of this act, the division shall direct the
77 secretary of state to suspend the business license of, and the secretary of state shall direct
78 the applicable municipal or county governing body to suspend the business permit and any
79 applicable license or exemptions of the business entity for a period of ten days. The
80 secretary of state shall reinstate the business permit and any applicable license or
81 exemptions after the end of the suspension period, and upon receipt of the prescribed
82 affidavit under subsection 6 and documentation which confirms that the business entity
83 has enrolled in and is participating in the employment eligibility verification/basic pilot
84 program. The division shall forward the affidavit, complaint, and associated documents
85 to the Bureau of Immigration and Customs Enforcement of the United States Department
86 of Homeland Security.

87 9. Any city or county governing body in the state of Missouri that fails to comply
88 with directives from the secretary of state regarding the suspension of a business permit
89 and any applicable license or exemptions of a business entity shall be ineligible for state
90 funding.

91 10. Sections 1 to 3 of this act shall not be construed to deny any procedural
92 mechanisms included in the employment eligibility verification/basic pilot program.

93 11. Any business entity subject to a complaint and subsequent enforcement under
94 this act, or any employee of such a business entity, may challenge the enforcement of this
95 section with respect to such entity or employee in the courts of the state of Missouri.

96 12. The determination of whether a worker is an unauthorized alien shall be made
97 by the federal government, under 8 U.S.C. 1373(c). A determination of such status of an
98 individual by the federal government shall create a rebuttable presumption as to that
99 individual's status in any judicial proceedings brought under sections 2 and 3 of this act.

100 The court may take judicial notice of any verification of an individual's status previously
101 provided by the federal government and may request the federal government to provide
102 automated or testimonial verification under 8 U.S.C. 1373(c).

103 13. (1) A general contractor will not be held liable under this section if:

104 (a) The general contractor verifies that all subcontractors and independent
105 contractors hired by the general contractor have enrolled with the employment eligibility
106 verification/basic pilot program; and

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

109 (2) If a general contractor fails to comply with either of the provisions in subsection
110 1 of this section, he or she may be found liable for all violations of any subcontractor or
111 independent contractor under the employ of the general contractor.

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

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

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