

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1736 & 2320
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Immigration April 21, 2008 with recommendation that House Committee Substitute for House Bill Nos. 1736 & 2320 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules April 30, 2008 with recommendation that House Committee Substitute for House Bill Nos. 1736 & 2320 Do Pass with no time limit for debate.

Taken up for Perfection May 8, 2008. House Committee Substitute for House Bill Nos. 1736 & 2320 ordered Perfected and printed, as amended.

D. ADAM CRUMBLISS, Chief Clerk

4372L.07P

AN ACT

To amend chapters 67, 208, 285, and 650, RSMo, by adding thereto ten new sections relating to illegal aliens, with a penalty provision and an effective date for certain sections.

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

Section A. Chapters 67, 208, 285, and 650, RSMo, are amended by adding thereto ten
2 new sections, to be known as sections 67.307, 208.009, 285.525, 285.530, 285.535, 285.540,
3 285.550, 285.555, 285.560, and 650.681, to read as follows:

67.307. 1. As used in this section, the following terms mean:

2 **(1) "Law enforcement officer", a sheriff or peace officer of a municipality with the**
3 **duty and power of arrest for violation of the general criminal laws of the state or for**
4 **violation of ordinances of municipalities;**

5 **(2) "Municipality", any county, city, town, or village;**

6 **(3) "Municipality official", any elected or appointed official or any law**
7 **enforcement officer serving the municipality;**

8 **(4) "Sanctuary policy", any municipality's order, ordinance, or policy enacted or**
9 **followed, written or unwritten, that:**

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.

10 (a) Limits or prohibits any municipality official or person employed by the
11 municipality from communicating or cooperating with federal agencies or officials to verify
12 or report the immigration status of any alien within such municipality; or

13 (b) Grants to illegal aliens the right to lawful presence or status within the
14 municipality in violation of federal immigration law.

15 2. No municipality shall enact or adopt any sanctuary policy. Any municipality
16 that enacts or adopts a sanctuary policy, written or unwritten, shall be ineligible for any
17 moneys provided through grants administered by any state agency or department until the
18 sanctuary policy is repealed or is no longer in effect. Upon the complaint of any state
19 resident regarding a specific municipality of this state or prior to the provision of funds or
20 awarding of any grants to any municipality of this state, any member of the general
21 assembly may request that the attorney general of the state of Missouri issue an opinion
22 stating whether the municipality has a sanctuary policy, written or unwritten, in
23 contravention of this section.

24 3. The governing body, sheriff, or chief of police of each municipality shall provide
25 each law enforcement officer with written notice of their duty to cooperate with state and
26 federal agencies and officials on matters pertaining to enforcement of state and federal
27 laws governing immigration.

 208.009. 1. No person who is not a citizen or a permanent resident of the United
2 States or who does not possess lawful immigration status shall receive any state or local
3 public benefit, as defined in 8 U.S.C. Section 1621(c)(1)(B), under this chapter, except for
4 a state or local public benefit that is specified under 8 U.S.C. Section 1621(b) or otherwise
5 mandated by federal law.

6 2. In addition to providing proof of other eligibility requirements, at the time of
7 application for any state or local public benefit, an applicant who is nineteen years of age
8 or older shall provide affirmative proof that the applicant is a citizen or a permanent
9 resident of the United States or is lawfully present in the United States. Such affirmative
10 proof shall consist of documentary evidence recognized by the department of revenue when
11 processing an application for a driver's license. A state or local government agency
12 administering state or local public benefits shall accept any identification card issued by
13 a state or local government agency, including a driver's license, to establish identity or
14 determine eligibility for the state or local public benefit if the state or local government
15 agency that issued the card has verified the eligibility of the applicant.

16 3. An applicant who cannot provide the proof required under this section at the
17 time of application may alternatively sign an affidavit under oath, attesting to either United
18 States citizenship or to classification by the United States as an alien lawfully admitted for

19 permanent residence, in order to receive temporary benefits or a temporary identification
20 document as provided in this section. The affidavit shall be on or consistent with forms
21 prepared by the state or local government agency administering the state or local public
22 benefits and shall include the applicant's Social Security number and an explanation of the
23 penalties under state law for obtaining state or local public benefits fraudulently.

24 4. An applicant who has provided the sworn affidavit required under subsection
25 3 of this section is eligible to receive temporary state or local public benefits as follows:

26 (1) For ninety days or until such time that it is determined the applicant is not
27 lawfully present in the United States, whichever is earlier; or

28 (2) Indefinitely if the applicant provides a copy of a completed application for a
29 birth certificate that is pending in Missouri or some other state. An extension granted
30 under this subsection shall terminate upon the applicant's receipt of a birth certificate or
31 a determination that a birth certificate does not exist because the applicant is not a United
32 States citizen.

33 5. Any applicant whose lawful presence in the United States is not established
34 under this section shall be reported to the United States Department of Homeland Security
35 and the United States Department of Citizenship and Immigration Services.

36 6. Nothing in this section shall be deemed to require any nonprofit organization
37 organized under the Internal Revenue Code to enforce the provisions of this section, nor
38 does it prohibit a nonprofit organization from providing aid.

285.525. 1. As used in sections 285.525 to 285.560, the following terms shall have
2 the following meanings:

3 (1) "Business entity", any person or group of persons performing or engaging in
4 any activity, enterprise, profession, or occupation for gain, benefit, advantage, or
5 livelihood, whether for profit or not for profit. The term business entity shall include but
6 not be limited to self-employed individuals, partnerships, corporations, contractors, and
7 subcontractors. The term business entity shall include any business entity that possesses
8 a business or other applicable license, permit, or tax certificate issued by the state or any
9 political subdivision thereof, any business entity that is exempt by law from obtaining such
10 a license or permit, and any business entity that is operating unlawfully without such a
11 license or permit. The term business entity shall not include a self-employed individual
12 with no employees;

13 (2) "Contractor", a person, employer, or business entity that enters into an
14 agreement to perform any service or work or to provide a certain product in exchange for
15 valuable consideration. This definition shall include but not be limited to a general

16 contractor, subcontractor, independent contractor, contract employee, project manager,
17 or a recruiting or staffing entity;

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

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

22 (5) "Employer", any person or entity employing or seeking to employ any person
23 for hire within the state of Missouri, including a public employer. Where there are two or
24 more putative employers, any person or entity taking a business tax deduction for the
25 employee in question shall be considered an employer of that person for purposes of
26 sections 285.525 to 285.560;

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

29 (7) "Federal Work Authorization Program", any of the electronic verification of
30 work authorization programs operated by the United States Department of Homeland
31 Security or any equivalent federal work authorization program operated by the United
32 States Department of Homeland Security to verify information of newly hired employees,
33 under the Immigration Reform and Control Act of 1986 (IRCA), D.L.99-603;

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

39 (9) "Political subdivision", any agency or unit of this state which now is, or
40 hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied;

41 (10) "Public employer", every department, agency, or instrumentality of the state
42 or political subdivision of the state;

43 (11) "Unauthorized alien", an alien who does not have the legal right or
44 authorization under federal law to work in the United States, as defined in 8 U.S.C.
45 1324a(h)(3);

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

285.530. 1. No business entity or employer shall knowingly employ, recruit, hire
2 for employment, or continue to employ an illegal alien to perform work within the state of
3 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 receiving a state-administered tax credit, tax abatement, or loan**
6 **from the state, the business entity shall, by sworn affidavit and provision of documentation,**
7 **affirm its enrollment and participation in any federal work authorization program. Every**
8 **business entity shall also sign an affidavit affirming that it does not knowingly employ any**
9 **person who is an unauthorized alien.**

10 **3. All public employers shall enroll and actively participate in any federal work**
11 **authorization program.**

12 **4. If an employer enrolls and participates in any federal work authorization**
13 **program, the business entity shall retain a written or electronic copy of the dated**
14 **verification report received from the federal government. Any business entity that**
15 **participates in such program shall have an affirmative defense that such business entity**
16 **has not violated the provisions of this section and section 285.535, unless it is proven by**
17 **clear and convincing evidence that the business entity had actual knowledge of the**
18 **unauthorized status of the employee under the Immigration Reform and Control Act of**
19 **1986 (8 U.S.C. 1324a), or its successor.**

20 **5. A contractor will not be held liable under this section if:**

21 **(1) The contractor provides documented proof of enrollment in any federal work**
22 **authorization program; or**

23 **(2) The contractor executes a sworn affidavit under penalty of perjury attesting**
24 **that all the contractor's employees are lawfully present in the United States.**

285.535. 1. The division shall enforce the requirements of sections 285.525 to
2 **285.560.**

3 **2. An enforcement action shall be initiated by means of a written, signed complaint**
4 **under penalty of perjury as defined in section 575.040, RSMo, to the division submitted by**
5 **any state official, business entity, or state resident. A valid complaint shall include an**
6 **allegation which describes the alleged violator as well as the actions constituting the**
7 **violation, and the date and location where such actions occurred. A complaint which**
8 **alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall**
9 **be deemed invalid and shall not be enforced.**

10 **3. Upon receipt of a valid complaint, the division shall, within ten business days,**
11 **request identity information from the business entity regarding any persons alleged to be**
12 **unauthorized aliens. Such request shall be made by certified mail. The division shall**
13 **direct the applicable municipal or county governing body to suspend any applicable**
14 **license, permit, or exemptions of any business entity which fails, within ten business days**
15 **after receipt of the request, to provide such information. For purposes of sections 285.525**

16 to 285.560, the division shall have the same power and authority as in section 290.280,
17 RSMo.

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

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

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

27 (3) If the federal government notifies the division that it is unable to verify whether
28 an employee is authorized to work in the United States, the division shall take no further
29 action on the complaint until a verification from the federal government concerning the
30 status of the individual is received. At no point shall any state official attempt to make an
31 independent determination of any alien's legal status without verification from the federal
32 government under 8 U.S.C. 1373(c).

33 5. (1) If the federal government notifies the division that an employee is not
34 authorized to work in the United States, and the employer of the unauthorized alien
35 participates in any federal work authorization program, there shall be a rebuttable
36 presumption that the employer has met the requirements for an affirmative defense under
37 subsection 4 of section 285.530, and the employer shall comply with subsection 6 of this
38 section.

39 (2) If the federal government notifies the division that an employee is not
40 authorized to work in the United States, and the employer of the unauthorized alien does
41 not participate in any federal work authorization program, the division shall, after notice
42 and a hearing, determine whether the business entity knowingly violated this section and
43 section 285.530:

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

46 (b) If the division finds that a business entity knowingly violated this act, the
47 division shall direct the applicable municipal or county governing body to suspend any
48 applicable licenses, permits, or exemptions of any business entity which fails to correct a
49 violation of this section and section 285.530, within ten business days after notification of
50 the violation by the division.

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

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

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

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

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

69 **(b) When two or more of the alleged unauthorized aliens were verified to be**
70 **unauthorized aliens, the legal representative of the business entity shall submit to the**
71 **division, in addition to the prescribed affidavit, documentation acceptable to the division**
72 **which confirms that the business entity has enrolled in and is participating in any federal**
73 **work authorization program.**

74 **7. The suspension of any applicable licenses, permits, or exemptions under**
75 **subsection 5 of this section shall terminate one business day after a legal representative of**
76 **the business entity submits the affidavit and other documentation required under**
77 **subsection 6 of this section.**

78 **8. For a second violation of this act, the division shall direct the applicable**
79 **municipal or county governing body to suspend any applicable license, permit, or**
80 **exemptions of the business entity for a minimum of thirty days and a maximum of sixty**
81 **days. For a third violation of this act, the division shall direct the applicable municipal or**
82 **county governing body to suspend any applicable license, permit, or exemptions of the**
83 **business entity for a minimum of one year and a maximum of five years. The division shall**
84 **direct the applicable municipal or county governing body to reinstate any applicable**
85 **license, permit, or exemptions after the end of the suspension period, and upon receipt by**
86 **the division of the prescribed affidavit under subsection 6 of this section and**

87 documentation which confirms that the business entity has enrolled in and is participating
88 in any federal work authorization program. The division shall forward the affidavit,
89 complaint, and associated documents to the Bureau of Immigration and Customs
90 Enforcement of the United States Department of Homeland Security.

91 9. In addition to the penalties in subsections 7 and 8 of this section:

92 (1) Upon the first violation of this section or section 285.530 by any business entity
93 awarded a state contract or grant or receiving a state-administered tax credit, tax
94 abatement, or loan from the state, the business entity shall be deemed in breach of contract
95 and the state shall terminate the contract and suspend or debar the business entity from
96 doing business with the state for a period of three years;

97 (2) Upon a second or subsequent violation of this act by any business entity
98 awarded a state contract or grant or receiving a state-administered tax credit, tax
99 abatement, or loan from the state, the business entity shall be deemed in breach of contract
100 and the state shall terminate the contract and permanently suspend or debar the business
101 entity from doing business with the state.

102 10. Sections 285.525 to 285.560 shall not be construed to deny any procedural
103 mechanisms included in any federal work authorization program.

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

107 12. If the division finds that any complaint is frivolous in nature or finds no
108 probable cause to believe that there has been a violation, the division shall dismiss the case.
109 For purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any
110 basis in fact or law. Any person who submits a frivolous complaint shall be liable for
111 actual, compensatory, and punitive damages to the alleged violator for holding the alleged
112 violator before the public in a false light. If the division finds that a complaint is frivolous
113 or that there is not probable cause to believe there has been a violation, the division shall
114 issue a public report to the complainant and the alleged violator stating with particularity
115 its reasons for dismissal of the complaint. Upon such issuance, the complaint and all
116 materials relating to the complaint shall be a public record as defined in chapter 610,
117 RSMo.

118 13. The determination of whether a worker is an unauthorized alien shall be made
119 by the federal government, under 8 U.S.C. 1373(c). A determination of such status of an
120 individual by the federal government shall create a rebuttable presumption as to that
121 individual's status in any judicial proceedings brought under this section and section
122 285.530. The court may take judicial notice of any verification of an individual's status

previously provided by the federal government and may request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

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

15. Any business entity which terminates an employee in accordance with this section shall not be liable for any claims made against the business entity under chapter 213, RSMo.

285.540. The division shall promulgate rules to implement the provisions of sections 285.525 to 285.560. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

285.550. If any municipal or county governing body fails to suspend any applicable licenses, permits, or exemptions as directed by the division as a result of a violation of section 285.535, the municipality shall be deemed to have adopted a sanctuary policy as defined in section 67.307, RSMo, and shall be subject to the penalties thereunder.

285.555. Should the federal government discontinue or fail to authorize or implement any federal work authorization program, the general assembly shall review the sections of this act for the purpose of determining whether the sections are no longer applicable and should be repealed.

285.560. The state shall indemnify, defend, and hold harmless any political subdivision, public official, or employee who is sued for violation of federal civil rights statutes when attempting to comply with the sections of this act.

650.681. 1. Notwithstanding any other provision of law, no government entity, political subdivision, or government official within the state of Missouri shall prohibit, or in any way restrict, any government entity or official from communicating or cooperating with the United States Bureau of Immigration and Customs Enforcement regarding the citizenship or immigration status, lawful or unlawful, of any individual.

2. Notwithstanding any other provision of law, no person or agency within the state of Missouri shall prohibit, or in any way restrict, a public employee from doing any of the

8 following with respect to information regarding the immigration status, lawful or unlawful,
9 of any individual:

10 (1) Sending such information to, or requesting or receiving such information from,
11 the United States Bureau of Immigration and Customs Enforcement;

12 (2) Maintaining such information;

13 (3) Exchanging such information with any other federal, state, or local government
14 entity;

15 (4) Asking an individual his or her citizenship or immigration status.

16 3. Upon the complaint of any state resident regarding a specific government entity,
17 agency, or political subdivision of this state or prior to the provision of funds or awarding
18 of any grants to a government entity, agency, or political subdivision of this state, any
19 member of the general assembly may request that the attorney general of the state of
20 Missouri issue an opinion stating whether the government entity, agency, or political
21 subdivision has current policies, written or unwritten, in contravention of subsections 1
22 and 2 of this section.

23 4. No state agency or department shall provide any funding or award any monetary
24 grants to any government entity, agency, or political subdivision determined under
25 subsection 3 of this section to have a policy in contravention of subsections 1 and 2 of this
26 section until the policy is repealed or no longer in effect.

Section B. The provisions of sections 67.307, 285.525, 285.530, 285.535, 285.540,
2 285.550, 285.555, 285.560, and 650.681 of section A of this act shall take effect on January 1,
3 2009.

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