

SECOND REGULAR SESSION

HOUSE BILL NO. 2320

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES NOLTE (Sponsor), DIXON, WILSON (130), SILVEY, SMITH (150), AVERY, PARKINSON, KRAUS, SANDER, NANCE, WILSON (119), DUSENBERG, DOUGHERTY, ONDER, WALLACE, RUESTMAN, SELF, HOBBS, FISHER, DAVIS, McGHEE, BROWN (30), WASSON, SATER AND PAGE (Co-sponsors).

Read 1st time February 28, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4784L.03I

AN ACT

Relating to 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 4 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) "Commission", the division of labor standards within the department of labor and industrial relations;

(3) "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 general

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

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

21 (5) "Employer", any person or entity employing or seeking to employ any person
22 for hire within the state of Missouri, including a public employer. Where there are two or
23 more putative employers, any person or entity taking a business tax deduction for the
24 employee in question shall be considered an employer of that person for purposes of
25 sections 1 to 4 of this act;

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

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

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

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

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

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

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

Section 2. 1. No business entity or employer shall employ, recruit, hire for
2 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 using state resources, the business entity shall, by sworn affidavit

6 and provision of documentation, affirm its enrollment and participation in the Federal
7 Work Authorization Program. Every business entity shall also sign an affidavit affirming
8 that it does not knowingly employ any person who is an unauthorized alien.

9 3. All public employers shall enroll and actively participate in the Federal Work
10 Authorization Program.

11 4. An employer shall enroll and participate in the Federal Work Employment
12 Program and shall verify the employment eligibility of every employee in the employer's
13 hire whose employment commences after the employer enrolls in the Federal Work
14 Authorization Program. The business entity shall retain a written copy of the dated
15 verification report received from the federal government; any business entity that
16 participates in such program shall have an affirmative defense that such business entity
17 has not violated the provisions of sections 2 and 3 of this act, unless it is proven by clear
18 and convincing evidence that the business entity had actual knowledge of the unauthorized
19 status of the employee under the Immigration Reform and Control Act of 1986 (8 U.S.C.
20 1324a), or its successor.

 Section 3. 1. The commission shall enforce the requirements of sections 1 to 4 of
2 this act.

3 2. An enforcement action shall be initiated by means of a written, signed complaint
4 to the commission 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 commission 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 commission shall
12 direct the secretary of state to direct the applicable municipal or county governing body
13 to suspend any applicable license of any business entity which fails, within ten business
14 days after receipt of the request, to provide such information.

15 4. The commission, 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 notice of the results of the verification request:

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

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

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

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

37 (2) If the federal government notifies the commission 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 Federal Work Authorization Program, the commission shall, after
40 notice and a hearing, determine whether the business entity knowingly violated sections
41 2 and 3 of this act:

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

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

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

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

56 (b) The business entity, after acquiring additional information from the employee,
57 requests a secondary or additional verification by the federal government of the employee's

58 authorization, under the procedures of the Federal Work Authorization Program. While
59 this verification is pending, the ten business day period referenced in subsection 5 of this
60 section shall be tolled; and

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

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

67 (b) When two or more of the alleged unauthorized aliens were verified to be
68 unauthorized aliens, the legal representative of the business entity shall submit to the
69 commission, in addition to the prescribed affidavit, documentation acceptable to the
70 commission which confirms that the business entity has enrolled in and is participating in
71 the Federal Work Authorization Program.

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

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

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

86 (1) Upon the first violation of this section or section 2 of this act by any business
87 entity awarded a state contract or grant or using state resources, the business entity shall
88 be deemed in breach of contract and the state shall terminate the contract and suspend or
89 debar the business entity from doing business with the state for a period of three years;

90 (2) Upon a second or subsequent violation of this act by any business entity
91 awarded a state contract or grant or using state resources, the business entity shall be
92 deemed in breach of contract and the state shall terminate the contract and permanently
93 suspend or debar the business entity from doing business with the state.

94 **10. Sections 1 to 4 of this act shall not be construed to deny any procedural**
95 **mechanisms included in the Federal Work Authorization Program.**

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

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

106 **13. A contractor will not be held liable under this section if:**

107 **(1) The contractor provides documented proof of enrollment in the Federal Work**
108 **Authorization Program; or**

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

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

Section 4. The commission shall promulgate rules to implement the provisions of
2 **sections 1 to 4 of this act. Any rule or portion of a rule, as that term is defined in section**
3 **536.010, RSMo, that is created under the authority delegated in this section shall become**
4 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
5 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
6 **nonseverable and if any of the powers vested with the general assembly under chapter 536,**
7 **RSMo, to review, to delay the effective date, or to disapprove and annul a rule are**
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
9 **proposed or adopted after August 28, 2008, shall be invalid and void.**

Section B. The provisions of sections 1, 2, 3, and 4, of this act shall take effect on
2 **January 1, 2009.**

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