

SECOND REGULAR SESSION

# HOUSE BILL NO. 2179

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), WALLACE, SCHIEFFER, MCGHEE,  
PAGE, DOUGHERTY, MEINERS, ROORDA AND WHORTON (Co-sponsors).

Read 1st time February 18, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 285, RSMo, by adding thereto five new sections relating to unauthorized aliens, with an emergency clause.

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

Section A. Chapter 285, RSMo, is amended by adding thereto five new sections, to be  
2 known as sections 285.450, 285.453, 285.456, 285.459, and 285.462, to read as follows:

**285.450. As used in sections 285.450 to 285.462, the following terms mean:**

2 (1) "Agency", any agency, department, board, or commission of this state or any  
3 political subdivision;

4 (2) "Employee", any individual who performs services for an employer under an  
5 employment relationship between the employee and employer;

6 (3) "Employer", any individual or type of organization that transacts business in  
7 this state and employs one or more employees;

8 (4) "Status verification system", an electronic system operated by the federal  
9 government which may be utilized by an employer to verify the work authorization status  
10 of any individual and through which an authorized official of an agency of this state or of  
11 a political subdivision of this state may make an inquiry by exercise of authority delegated  
12 under 8 U.S.C. 1373 to verify the work authorization status of any individual. The status  
13 verification system shall be deemed to include the electronic verification of work  
14 authorization program under 8 U.S.C. 1324a and operated by the United States

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.

15 Department of Homeland Security, known as E-Verify, or any equivalent federal work  
16 authorization program designated by the United States Department of Homeland Security  
17 or any other federal agency authorized to verify the work authorization status of newly  
18 hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-  
19 603;

20 (5) "Unauthorized alien", an alien who does not have the legal right or  
21 authorization under federal law to work in the United States, as described in 8 U.S.C.  
22 1324a(h)(3).

285.453. 1. When a person files a complaint with the attorney general or  
2 prosecuting attorney alleging that an employer is employing an unauthorized alien, the  
3 attorney general or prosecuting attorney shall investigate the complaint. In pursuing an  
4 investigation, the attorney general or prosecuting attorney shall check the work  
5 authorization of any alleged unauthorized alien with the United States Department of  
6 Homeland Security and Immigration and Naturalization Service under 8 U.S.C 1373(c).  
7 An employer that is the subject of an investigation shall cooperate in the investigation and  
8 the attorney general or prosecuting attorney shall have subpoena powers to obtain records  
9 or testimony related to the investigation.

10 2. The attorney general or prosecuting attorney, after conducting its investigation,  
11 may take one or more of the following actions:

12 (1) Seek injunctive relief;

13 (2) Seek to place the employer on probation, as provided in section 285.456;

14 (3) Refer its investigation to the appropriate federal authorities for any action that  
15 may be taken under federal law.

16 3. Nothing in this section shall preclude the attorney general or prosecuting  
17 attorney from taking any other action authorized by law.

285.456. 1. If a court determines than an employer knowingly employed an  
2 unauthorized alien it shall, for a first violation:

3 (1) Order the employer to a three year probationary period which shall begin on  
4 the date the court enters the order;

5 (2) Order the employer to file, during the probationary period, quarterly reports  
6 with the attorney general or prosecuting attorney of each new employee who is hired by  
7 the employer;

8 (3) Order the employer to file a sworn affidavit with the court and the attorney  
9 general or prosecuting attorney within three business days after the order is entered. The  
10 affidavit shall state the employer has terminated the employment of all unauthorized aliens  
11 and the employer will not knowingly employ an unauthorized alien.

12 Any agency that has issued a license to that employer shall receive notice of the probation.

13 2. If the employer fails to file the sworn affidavit within three business days, as  
14 required under subdivision (3) of subsection 1 of this section, the court shall enjoin the  
15 employer from transacting business in the state until the employer files the affidavit. Once  
16 the affidavit is filed, the court shall order the injunction to be lifted immediately.

17 3. In addition to the remedies available to the court under subsection 1 of this  
18 section, the court may enjoin the employer from transacting business in this state for up  
19 to fifteen days. In determining the appropriate time period for the injunction, the court  
20 shall consider the following factors:

21 (1) Number of unauthorized aliens employed;

22 (2) Degree of harm resulting from the violation;

23 (3) Whether the employer made good faith efforts to comply with any applicable  
24 requirements;

25 (4) Duration of the violation;

26 (5) Participation of directors, officers, or principals of the employer in the violation;

27 (6) Any other factors the court deems appropriate.

28 4. If a court finds that an employer knowingly employed an unauthorized alien  
29 while on probation, it shall issue an injunction permanently enjoining the employer from  
30 transacting business in this state. Any agency that has issued a license to that employer  
31 shall receive notice of the injunction.

32 5. In making a determination whether an employee is an unauthorized alien under  
33 sections 285.450 to 285.462, the court shall only consider the federal government's  
34 determination under 8 U.S.C. 1373(c).

35 6. An employer who demonstrates that it had implemented the status verification  
36 system at the time it hired the alleged unauthorized alien creates a rebuttable presumption  
37 that the employer did not knowingly employ an unauthorized alien.

38 7. The attorney general or prosecuting attorney may bring an action under this  
39 section or section 285.453 in any county where the employer does business.

285.459. An individual who submits a complaint to the attorney general or  
2 prosecuting attorney regarding an employer's alleged violation of section 285.456 may  
3 recover up to ten percent of any moneys recovered by the state for any violations  
4 committed by that employer.

285.462. Beginning July 1, 2009, the department of labor and industrial relations  
2 shall, after reviewing relevant data regarding the employment of unauthorized aliens,  
3 determine which classification of employers shall be required to verify the immigration  
4 status of employees through the status verification system.

Section B. Because of the need to assure that employers and employees are adequately  
2 protected under state law, section A of this act is deemed necessary for the immediate  
3 preservation of public health, welfare, peace, and safety and is hereby considered to be an  
4 emergency act within the meaning of the constitution, and section A of this act shall be in full  
5 force and effect upon its passage and approval.

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