

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 390

AN ACT

To repeal sections 208.009, 285.530, 285.555, and 292.675, RSMo, and to enact in lieu thereof five new section 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Section A. Sections 208.009, 285.530, 285.555, and 292.675, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 173.1110, 208.009, 285.530, 285.555, and 292.675, to read as follows:

173.1110. 1. No covered student unlawfully present in the United States shall receive a postsecondary education public benefit. Educational institutions awarding postsecondary education public benefits to covered students shall verify that these students are United States citizens, permanent residents, or lawfully present in the United States.

2. The following documents, in hard copy or electronic

1 form, may be used to document that a covered student is a United  
2 States citizen, permanent resident, or is lawfully present in the  
3 United States:

4 (1) The Free Application for Student Aid Institutional  
5 Student Information Record;

6 (2) A state-issued driver's license;

7 (3) A state-issued nondriver's identification card;

8 (4) Documentary evidence recognized by the department of  
9 revenue when processing an application for a driver's license or  
10 nondriver's identification card;

11 (5) A United States birth certificate;

12 (6) A United States military identification card; or

13 (7) Any document issued by the federal government that  
14 confirms an alien's lawful presence in the United States.

15 3. All postsecondary higher education institutions shall  
16 annually certify to the department of higher education that they  
17 have not knowingly awarded a postsecondary education public  
18 benefit to a covered student who is unlawfully present in the  
19 United States.

20 4. As used in this section, the following terms shall mean:

21 (1) "Covered student", a student eighteen years of age or  
22 older, who has graduated from high school and is attending  
23 classes on the campus of a postsecondary educational institution  
24 during regularly scheduled academic sessions;

25 (2) "Postsecondary education public benefit", institutional  
26 financial aid awarded by public postsecondary educational  
27 institutions and state-administered postsecondary grants and  
28 scholarships awarded by all postsecondary educational

1 institutions to covered students.

2       208.009. 1. No alien unlawfully present in the United  
3 States shall receive any state or local public benefit, except  
4 for state or local public benefits that may be offered under 8  
5 U.S.C. 1621(b). Nothing in this section shall be construed to  
6 prohibit the rendering of emergency medical care, prenatal care,  
7 services offering alternatives to abortion, emergency assistance,  
8 or legal assistance to any person.

9       2. As used in this section, "public benefit" means any  
10 grant, contract, or loan provided by an agency of state or local  
11 government; or any retirement, welfare, health, [postsecondary  
12 education, state grants and scholarships,] disability, housing,  
13 or food assistance benefit under which payments, assistance,  
14 credits, or reduced rates or fees are provided. The term "public  
15 benefit" shall not include postsecondary education public  
16 benefits as defined in section 173.1110, RSMo, any municipal  
17 permit, or contracts or agreements between public utility  
18 providers and their customers or unemployment benefits payable  
19 under chapter 288, RSMo. The unemployment compensation program  
20 shall verify the lawful presence of an alien for the purpose of  
21 determining eligibility for benefits in accordance with its own  
22 procedures.

23       3. In addition to providing proof of other eligibility  
24 requirements, at the time of application for any state or local  
25 public benefit, an applicant who is eighteen years of age or  
26 older shall provide affirmative proof that the applicant is a  
27 citizen or a permanent resident of the United States or is  
28 lawfully present in the United States[, provided, however, that

1 in the case of state grants and scholarships, such proof shall be  
2 provided before the applicant receives any state grant or  
3 scholarship]. Such affirmative proof shall include documentary  
4 evidence recognized by the department of revenue when processing  
5 an application for a driver's license, a Missouri driver's  
6 license, as well as any document issued by the federal government  
7 that confirms an alien's lawful presence in the United States.  
8 In processing applications for public benefits, an employee of an  
9 agency of state or local government shall not inquire about the  
10 legal status of a custodial parent or guardian applying for a  
11 public benefit on behalf of his or her dependent child who is a  
12 citizen or permanent resident of the United States.

13 4. An applicant who cannot provide the proof required under  
14 this section at the time of application may alternatively sign an  
15 affidavit under oath, attesting to either United States  
16 citizenship or classification by the United States as an alien  
17 lawfully admitted for permanent residence, in order to receive  
18 temporary benefits or a temporary identification document as  
19 provided in this section. The affidavit shall be on or  
20 consistent with forms prepared by the state or local government  
21 agency administering the state or local public benefits and shall  
22 include the applicant's Social Security number or any applicable  
23 federal identification number and an explanation of the penalties  
24 under state law for obtaining public assistance benefits  
25 fraudulently.

26 5. An applicant who has provided the sworn affidavit  
27 required under subsection 4 of this section is eligible to  
28 receive temporary public benefits as follows:

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

4           (2) Indefinitely if the applicant provides a copy of a  
5 completed application for a birth certificate that is pending in  
6 Missouri or some other state. An extension granted under this  
7 subsection shall terminate upon the applicant's receipt of a  
8 birth certificate or a determination that a birth certificate  
9 does not exist because the applicant is not a United States  
10 citizen.

11           6. An applicant who is an alien shall not receive any state  
12 or local public benefit unless the alien's lawful presence in the  
13 United States is first verified by the federal government. State  
14 and local agencies administering public benefits in this state  
15 shall cooperate with the United States Department of Homeland  
16 Security in achieving verification of an alien's lawful presence  
17 in the United States in furtherance of this section. The system  
18 utilized may include the Systematic Alien Verification for  
19 Entitlements Program operated by the United States Department of  
20 Homeland Security. After an applicant's lawful presence in the  
21 United States has been verified through the Systematic Alien  
22 Verification for Entitlements Program, no additional verification  
23 is required within the same agency of the state or local  
24 government.

25           7. The provisions of this section shall not be construed to  
26 require any nonprofit organization [organized under] duly  
27 registered with the Internal Revenue [Code] Service to enforce  
28 the provisions of this section, nor does it prohibit such an

1 organization from providing aid.

2 8. Any agency that administers public benefits shall  
3 provide assistance in obtaining appropriate documentation to  
4 persons applying for public benefits who sign the affidavit  
5 required by subsection 4 of this section stating they are  
6 eligible for such benefits but lack the documents required under  
7 subsection 3 of this section.

8 285.530. 1. No business entity or employer shall knowingly  
9 employ, hire for employment, or continue to employ an  
10 unauthorized alien to perform work within the state of Missouri.

11 2. As a condition for the award of any contract or grant in  
12 excess of five thousand dollars by the state or by any political  
13 subdivision of the state to a business entity, or for any  
14 business entity receiving a state-administered or subsidized tax  
15 credit, tax abatement, or loan from the state, the business  
16 entity shall, by sworn affidavit and provision of documentation,  
17 affirm its enrollment and participation in a federal work  
18 authorization program with respect to the employees working in  
19 connection with the contracted services. Every such business  
20 entity shall also sign an affidavit affirming that it does not  
21 knowingly employ any person who is an unauthorized alien in  
22 connection with the contracted services. Any entity contracting  
23 with the state or any political subdivision of the state shall  
24 only be required to provide the affidavits required in this  
25 subsection to the state and any political subdivision of the  
26 state with which it contracts, on an annual basis. During or  
27 immediately after an emergency, the requirements of this  
28 subsection that a business entity enroll and participate in a

federal work authorization program shall be suspended for fifteen working days. As used in this subsection, "emergency" includes the following natural and manmade disasters: major snow and ice storms, floods, tornadoes, severe weather, earthquakes, hazardous material incidents, nuclear power plant accidents, other radiological hazards, and major mechanical failures of a public utility facility.

3. All public employers shall enroll and actively participate in a federal work authorization program.

4. An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section.

5. A general contractor or subcontractor of any tier shall not be liable under sections 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's

1 employees are lawfully present in the United States.

2 285.555. Should the federal government discontinue or fail  
3 to authorize or implement any federal work authorization program,  
4 then subsections 2 and 3 of section 285.530 and paragraph (b) of  
5 subdivision (1) of subsection 6 of section 285.535 and paragraph  
6 (b) of subdivision (2) of subsection 6 of section 285.535 shall  
7 not apply after the date of discontinuance or failure to  
8 authorize or implement, and the general assembly shall review  
9 sections 285.525 to 285.555 for the purpose of determining  
10 whether the sections are no longer applicable and should be  
11 repealed.

12 292.675. 1. As used in this section, the following terms  
13 shall mean:

14 (1) "Construction", construction, reconstruction,  
15 demolition, painting and decorating, or major repair;

16 (2) "Contractor", any person entering into a contract with  
17 a public body for construction of public works which employs "on-  
18 site employees" for purposes of completion of the contract;

19 (3) "Department", the department of labor and industrial  
20 relations;

21 (4) "On-site employee", laborers, workmen, drivers,  
22 equipment operators, and craftsmen employed by contractors and  
23 subcontractors to be directly engaged in construction at the site  
24 of the public works. "Directly engaged in construction" shall  
25 mean work performed in the actual erection of the structure or  
26 completion of the improvement constituting the public works. In  
27 addition, employees working at a nearby or adjacent facility used  
28 by the contractor or subcontractor for construction of the public



1 works shall be deemed "on-site employees". Persons engaged  
2 solely in the transportation of materials, fuel, or equipment to  
3 the site of the public works shall not be deemed to be "directly  
4 engaged in construction;

5        [(3)] (5) "Person", any natural person, joint venture,  
6 partnership, corporation, or other business or legal entity;

7        [(4)] (6) "Public body", the state of Missouri or any  
8 officer, official, authority, board or commission of the state,  
9 or other political subdivision thereof, or any institution  
10 supported in whole or in part by public funds;

11        [(5)] (7) "Public works", all fixed works constructed for  
12 public use or benefit or paid for wholly or in part out of public  
13 funds. "Public works" includes any work done directly by any  
14 public utility company when performed by it pursuant to the order  
15 of the public service commission or other public authority  
16 whether or not it be done under public supervision or direction  
17 or paid for wholly or in part out of public funds when let to  
18 contract by said utility;

19        (8) "Subcontractor", any person entering into a subcontract  
20 with a contractor for construction of public works which employs  
21 "on-site employees" for purposes of completion of the contract.

22        2. Any [person signing a contract to work on the  
23 construction of public works] contractor for any public body for  
24 purposes of construction of public works and any subcontractor to  
25 such contractor shall provide a ten-hour Occupational Safety and  
26 Health Administration (OSHA) construction safety program for  
27 their on-site employees which includes a course in construction  
28 safety and health approved by OSHA or a similar program approved

1 by the department which is at least as stringent as an approved  
2 OSHA program, unless such employees have previously completed the  
3 required program. All employees who have not previously  
4 completed the program are required to complete the program within  
5 sixty days of beginning work on such construction project.

6 3. Any employee found on a work site subject to this  
7 section without documentation of the successful completion of the  
8 course required under subsection 2 of this section shall be  
9 afforded twenty days to produce such documentation before being  
10 subject to removal from the project.

11 4. The public body shall specify the requirements of this  
12 section in the resolution or ordinance and in the call for bids  
13 for the contract. The contractor to whom the contract is awarded  
14 and any subcontractor under such contractor shall require all  
15 on-site employees to complete the ten-hour training program  
16 required under subsection 2 of this section or such employees  
17 must hold documentation of prior completion of the program. The  
18 public body awarding the contract shall include this requirement  
19 in the contract. The contractor shall forfeit as a penalty to  
20 the public body on whose behalf the contract is made or awarded,  
21 two thousand five hundred dollars plus one hundred dollars for  
22 each employee employed by the contractor or subcontractor, for  
23 each calendar day, or portion thereof, such employee is employed  
24 without the required training. The penalty shall not begin to  
25 accrue until the time period in subsections 2 and 3 of this  
26 section have elapsed. The public body awarding the contract  
27 shall include notice of these penalties in the contract. The  
28 public body awarding the contract shall withhold and retain

1   therefrom all sums and amounts due and owing as a result of any  
2   violation of this section when making payments to the contractor  
3   under the contract. The contractor may withhold from any  
4   subcontractor sufficient sums to cover any penalties the public  
5   body has withheld from the contractor resulting from the  
6   subcontractor's failure to comply with the terms of this section.  
7   If the payment has been made to the subcontractor without  
8   withholding, the contractor may recover the amount of the penalty  
9   resulting from the fault of the subcontractor in an action  
10  maintained in the circuit court in the county in which the public  
11  works project is located from the subcontractor.

12         5. In determining whether a violation of this section has  
13  occurred, and whether the penalty under subsection 4 of this  
14  section shall be imposed, the department shall investigate any  
15  claim of violation. Upon completing such investigation, the  
16  department shall notify the public body and any party found to be  
17  in violation of this section of its findings and whether a  
18  penalty shall be assessed. Determinations under this section may  
19  be appealed in the circuit court in the county in which the  
20  public works project is located.

21         6. If the contractor or subcontractor fails to pay the  
22  penalty within forty-five days following notification by the  
23  department, the department shall pursue an enforcement action to  
24  enforce the monetary penalty provisions of subsection 4 of this  
25  section against the contractor or subcontractor found to be in  
26  violation of this section. If the court orders payment of the  
27  penalties as prescribed under subsection 4 of this section, the  
28  department shall be entitled to recover its actual cost of

1 enforcement in addition to such penalty amount.

2 7. The department may establish rules and regulations for  
3 the purpose of implementing the provisions of this section. Any  
4 rule or portion of a rule, as that term is defined in section  
5 536.010, RSMo, that is created under the authority delegated in  
6 this section shall become effective only if it complies with and  
7 is subject to all of the provisions of chapter 536, RSMo, and, if  
8 applicable, section 536.028, RSMo. This section and chapter 536,  
9 RSMo, are nonseverable and if any of the powers vested with the  
10 general assembly pursuant to chapter 536, RSMo, to review, to  
11 delay the effective date, or to disapprove and annul a rule are  
12 subsequently held unconstitutional, then the grant of rulemaking  
13 authority and any rule proposed or adopted after August 28, 2008,  
14 shall be invalid and void.

15 8. This section shall not apply to work performed by public  
16 utilities which are under the jurisdiction of the public service  
17 commission, or their contractors, or work performed at or on  
18 facilities owned or operated by said public utilities.

19 9. The provisions of this section shall not apply to rail  
20 grade crossing improvement projects where there exists a signed  
21 agreement between the railroad and the Missouri department of  
22 transportation or an order issued by the department of  
23 transportation ordering such construction.

24 10. This section shall take effect on August 28, 2009.

25 Section B. Because immediate action is necessary to prevent  
26 illegal student enrollment and to promote legal foreign student  
27 enrollment in the upcoming summer educational sessions, and to  
28 prevent the disqualification of legitimate public works

contractors, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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