

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 390

95TH GENERAL ASSEMBLY

0766L.06T

2009

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.

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Section A. Sections 208.009, 285.530, 285.555, and 292.675, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 173.1110, 208.009, 285.530,
3 285.555, and 292.675, to read as follows:

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

5 **2. The following documents, in hard copy or electronic form, may be used to**
6 **document that a covered student is a United States citizen, permanent resident, or is**
7 **lawfully present in the United States:**

8 **(1) The Free Application for Student Aid Institutional Student Information**
9 **Record;**

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

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

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.

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

(5) A United States birth certificate;

(6) A United States military identification card; or

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

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

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

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

(2) "Postsecondary education public benefit", institutional financial aid awarded by public postsecondary educational institutions and state-administered postsecondary grants and scholarships awarded by all postsecondary educational institutions to covered students.

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

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

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

19 state grants and scholarships, such proof shall be provided before the applicant receives any state
20 grant or scholarship]. Such affirmative proof shall include documentary evidence recognized
21 by the department of revenue when processing an application for a driver's license, a Missouri
22 driver's license, as well as any document issued by the federal government that confirms an
23 alien's lawful presence in the United States. In processing applications for public benefits, an
24 employee of an agency of state or local government shall not inquire about the legal status of a
25 custodial parent or guardian applying for a public benefit on behalf of his or her dependent child
26 who is a citizen or permanent resident of the United States.

27 4. An applicant who cannot provide the proof required under this section at the time of
28 application may alternatively sign an affidavit under oath, attesting to either United States
29 citizenship or classification by the United States as an alien lawfully admitted for permanent
30 residence, in order to receive temporary benefits or a temporary identification document as
31 provided in this section. The affidavit shall be on or consistent with forms prepared by the state
32 or local government agency administering the state or local public benefits and shall include the
33 applicant's Social Security number or any applicable federal identification number and an
34 explanation of the penalties under state law for obtaining public assistance benefits fraudulently.

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

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

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

43 6. An applicant who is an alien shall not receive any state or local public benefit unless
44 the alien's lawful presence in the United States is first verified by the federal government. State
45 and local agencies administering public benefits in this state shall cooperate with the United
46 States Department of Homeland Security in achieving verification of an alien's lawful presence
47 in the United States in furtherance of this section. The system utilized may include the
48 Systematic Alien Verification for Entitlements Program operated by the United States
49 Department of Homeland Security. **After an applicant's lawful presence in the United States**
50 **has been verified through the Systematic Alien Verification for Entitlements Program, no**
51 **additional verification is required within the same agency of the state or local government.**

52 7. The provisions of this section shall not be construed to require any nonprofit
53 organization [organized under] **duly registered with** the Internal Revenue [Code] **Service** to

54 enforce the provisions of this section, nor does it prohibit such an organization from providing
55 aid.

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

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

4 2. As a condition for the award of any contract or grant in excess of five thousand dollars
5 by the state or by any political subdivision of the state to a business entity, or for any business
6 entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the
7 state, the business entity shall, by sworn affidavit and provision of documentation, affirm its
8 enrollment and participation in a federal work authorization program with respect to the
9 employees working in connection with the contracted services. Every such business entity shall
10 also sign an affidavit affirming that it does not knowingly employ any person who is an
11 unauthorized alien in connection with the contracted services. **Any entity contracting with the**
12 **state or any political subdivision of the state shall only be required to provide the affidavits**
13 **required in this subsection to the state and any political subdivision of the state with which**
14 **it contracts, on an annual basis. During or immediately after an emergency, the**
15 **requirements of this subsection that a business entity enroll and participate in a federal**
16 **work authorization program shall be suspended for fifteen working days. As used in this**
17 **subsection, "emergency" includes the following natural and manmade disasters: major**
18 **snow and ice storms, floods, tornadoes, severe weather, earthquakes, hazardous material**
19 **incidents, nuclear power plant accidents, other radiological hazards, and major mechanical**
20 **failures of a public utility facility.**

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

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

29 5. A general contractor or subcontractor of any tier shall not be liable under sections
30 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct

31 subcontractor who violates subsection 1 of this section, if the contract binding the contractor and
32 subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of
33 subsection 1 of this section and shall not henceforth be in such violation and the contractor or
34 subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the
35 direct subcontractor's employees are lawfully present in the United States.

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

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

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

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

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

8 (4) "On-site employee", **laborers, workmen, drivers, equipment operators, and**
9 **craftsmen employed by contractors and subcontractors to be directly engaged in**
10 **construction at the site of the public works. "Directly engaged in construction" shall mean**
11 **work performed in the actual erection of the structure or completion of the improvement**
12 **constituting the public works. In addition, employees working at a nearby or adjacent**
13 **facility used by the contractor or subcontractor for construction of the public works shall**
14 **be deemed "on-site employees". Persons engaged solely in the transportation of materials,**
15 **fuel, or equipment to the site of the public works shall not be deemed to be "directly**
16 **engaged in construction;**

17 [(3)] (5) "Person", any natural person, joint venture, partnership, corporation, or other
18 business or legal entity;

19 [(4)] (6) "Public body", the state of Missouri or any officer, official, authority, board or
20 commission of the state, or other political subdivision thereof, or any institution supported in
21 whole or in part by public funds;

22 [(5)] (7) "Public works", all fixed works constructed for public use or benefit or paid for
23 wholly or in part out of public funds. "Public works" includes any work done directly by any
24 public utility company when performed by it pursuant to the order of the public service

25 commission or other public authority whether or not it be done under public supervision or
26 direction or paid for wholly or in part out of public funds when let to contract by said utility;

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

30 2. Any [person signing a contract to work on the construction of public works]
31 **contractor** for any public body **for purposes of construction of public works and any**
32 **subcontractor to such contractor** shall provide a ten-hour Occupational Safety and Health
33 Administration (OSHA) construction safety program for their on-site employees which includes
34 a course in construction safety and health approved by OSHA or a similar program approved by
35 the department which is at least as stringent as an approved OSHA program, **unless such**
36 **employees have previously completed the required program.** All employees **who have not**
37 **previously completed the program** are required to complete the program within sixty days of
38 beginning work on such construction project.

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

43 4. The public body shall specify the requirements of this section in the resolution or
44 ordinance and in the call for bids for the contract. The contractor to whom the contract is
45 awarded and any subcontractor under such contractor shall require all on-site employees to
46 complete the ten-hour training program required under subsection 2 of this section **or such**
47 **employees must hold documentation of prior completion of the program.** The public body
48 awarding the contract shall include this requirement in the contract. The contractor shall forfeit
49 as a penalty to the public body on whose behalf the contract is made or awarded, two thousand
50 five hundred dollars plus one hundred dollars for each employee employed by the contractor or
51 subcontractor, for each calendar day, or portion thereof, such employee is employed without the
52 required training. The penalty shall not begin to accrue until the time period in subsections 2 and
53 3 of this section have elapsed. The public body awarding the contract shall include notice of
54 these penalties in the contract. The public body awarding the contract shall withhold and retain
55 therefrom all sums and amounts due and owing as a result of any violation of this section when
56 making payments to the contractor under the contract. The contractor may withhold from any
57 subcontractor sufficient sums to cover any penalties the public body has withheld from the
58 contractor resulting from the subcontractor's failure to comply with the terms of this section. If
59 the payment has been made to the subcontractor without withholding, the contractor may recover
60 the amount of the penalty resulting from the fault of the subcontractor in an action maintained

61 in the circuit court in the county in which the public works project is located from the
62 subcontractor.

63 5. In determining whether a violation of this section has occurred, and whether the
64 penalty under subsection 4 of this section shall be imposed, the department shall investigate any
65 claim of violation. Upon completing such investigation, the department shall notify the public
66 body and any party found to be in violation of this section of its findings and whether a penalty
67 shall be assessed. Determinations under this section may be appealed in the circuit court in the
68 county in which the public works project is located.

69 6. If the contractor or subcontractor fails to pay the penalty within forty-five days
70 following notification by the department, the department shall pursue an enforcement action to
71 enforce the monetary penalty provisions of subsection 4 of this section against the contractor or
72 subcontractor found to be in violation of this section. If the court orders payment of the penalties
73 as prescribed under subsection 4 of this section, the department shall be entitled to recover its
74 actual cost of enforcement in addition to such penalty amount.

75 7. The department may establish rules and regulations for the purpose of implementing
76 the provisions of this section. Any rule or portion of a rule, as that term is defined in section
77 536.010, RSMo, that is created under the authority delegated in this section shall become
78 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
79 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
80 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
81 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently
82 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
83 after August 28, 2008, shall be invalid and void.

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

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

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

Section B. Because immediate action is necessary to prevent illegal student enrollment
2 and to promote legal foreign student enrollment in the upcoming summer educational sessions,
3 and to prevent the disqualification of legitimate public works contractors, section A of this act
4 is deemed necessary for the immediate preservation of the public health, welfare, peace, and

5 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and
6 section A of this act shall be in full force and effect upon its passage and approval.

√