

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 390
95TH GENERAL ASSEMBLY

Reported from the Committee on Education, May 7, 2009, with recommendation that the Senate Committee Substitute do pass.

0766S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 208.009, 285.530, 285.555, and 292.675, RSMo, and to enact in lieu thereof five new sections 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
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 173.1110, 208.009, 285.530, 285.555, and 292.675, to read as follows:

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

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

**10 (1) The Free Application for Student Aid Institutional Student
11 Information Record;**

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

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (5) A United States birth certificate;

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

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

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

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

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

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

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

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

17 3. In addition to providing proof of other eligibility requirements, at the
18 time of application for any state or local public benefit, an applicant who is
19 eighteen years of age or older shall provide affirmative proof that the applicant

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

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

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

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

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

51 6. An applicant who is an alien shall not receive any state or local public
52 benefit unless the alien's lawful presence in the United States is first verified by
53 the federal government. State and local agencies administering public benefits
54 in this state shall cooperate with the United States Department of Homeland
55 Security in achieving verification of an alien's lawful presence in the United

56 States in furtherance of this section. The system utilized may include the
57 Systematic Alien Verification for Entitlements Program operated by the United
58 States Department of Homeland Security. **After an applicant's lawful**
59 **presence in the United States has been verified through the Systematic**
60 **Alien Verification for Entitlements Program, no additional verification**
61 **is required within the same agency of the state or local government.**

62 7. The provisions of this section shall not be construed to require any
63 nonprofit organization [organized under] **duly registered with** the Internal
64 Revenue [Code] **Service** to enforce the provisions of this section, nor does it
65 prohibit such an organization from providing aid.

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

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

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

22 **severe weather, earthquakes, hazardous material incidents, nuclear**
23 **power plant accidents, other radiological hazards, and major**
24 **mechanical failures of a public utility facility.**

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

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

34 5. A general contractor or subcontractor of any tier shall not be liable
35 under sections 285.525 to 285.550 when such general contractor or subcontractor
36 contracts with its direct subcontractor who violates subsection 1 of this section,
37 if the contract binding the contractor and subcontractor affirmatively states that
38 the direct subcontractor is not knowingly in violation of subsection 1 of this
39 section and shall not henceforth be in such violation and the contractor or
40 subcontractor receives a sworn affidavit under the penalty of perjury attesting to
41 the fact that the direct subcontractor's employees are lawfully present in the
42 United States.

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

4 (2) "Department", the department of labor and industrial relations;

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

7 (4) "Public body", the state of Missouri or any officer, official, authority,

8 board or commission of the state, or other political subdivision thereof, or any
9 institution supported in whole or in part by public funds;

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

16 2. Any person signing a contract to work on the construction of public
17 works for any public body shall provide a ten-hour Occupational Safety and
18 Health Administration (OSHA) construction safety program [for their on-site
19 employees] which includes a course in construction safety and health approved
20 by OSHA or a similar program approved by the department which is at least as
21 stringent as an approved OSHA program **for their on-site employees who**
22 **have not completed a program previously**. All employees **who have not**
23 **completed a program previously** are required to complete the program within
24 sixty days of beginning work on such construction project.

25 3. Any employee found on a work site subject to this section without
26 documentation of the successful completion of the [course] **program** required
27 under subsection 2 of this section shall be afforded twenty days to produce such
28 documentation before being subject to removal from the project.

29 4. The public body shall specify the requirements of this section in the
30 resolution or ordinance and in the call for bids for the contract. The contractor
31 to whom the contract is awarded and any subcontractor under such contractor
32 shall require all on-site employees to complete the ten-hour training program
33 required under subsection 2 of this section **or to provide documentation of**
34 **the previous successful completion of a program**. The public body
35 awarding the contract shall include this requirement in the contract. The
36 contractor shall forfeit as a penalty to the public body on whose behalf the
37 contract is made or awarded, two thousand five hundred dollars plus one hundred
38 dollars for each employee employed by the contractor or subcontractor, for each
39 calendar day, or portion thereof, such employee is employed without the required
40 training. The penalty shall not begin to accrue until the time period in
41 subsections 2 and 3 of this section have elapsed. The public body awarding the
42 contract shall include notice of these penalties in the contract. The public body
43 awarding the contract shall withhold and retain therefrom all sums and amounts

44 due and owing as a result of any violation of this section when making payments
45 to the contractor under the contract. The contractor may withhold from any
46 subcontractor sufficient sums to cover any penalties the public body has withheld
47 from the contractor resulting from the subcontractor's failure to comply with the
48 terms of this section. If the payment has been made to the subcontractor without
49 withholding, the contractor may recover the amount of the penalty resulting from
50 the fault of the subcontractor in an action maintained in the circuit court in the
51 county in which the public works project is located from the subcontractor.

52 5. In determining whether a violation of this section has occurred, and
53 whether the penalty under subsection 4 of this section shall be imposed, the
54 department shall investigate any claim of violation. Upon completing such
55 investigation, the department shall notify the public body and any party found
56 to be in violation of this section of its findings and whether a penalty shall be
57 assessed. Determinations under this section may be appealed in the circuit court
58 in the county in which the public works project is located.

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

66 7. The department may establish rules and regulations for the purpose of
67 implementing the provisions of this section. Any rule or portion of a rule, as that
68 term is defined in section 536.010, RSMo, that is created under the authority
69 delegated in this section shall become effective only if it complies with and is
70 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
71 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any
72 of the powers vested with the general assembly pursuant to chapter 536, RSMo,
73 to review, to delay the effective date, or to disapprove and annul a rule are
74 subsequently held unconstitutional, then the grant of rulemaking authority and
75 any rule proposed or adopted after August 28, 2008, shall be invalid and void.

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

79 9. The provisions of this section shall not apply to rail grade crossing

80 improvement projects where there exists a signed agreement between the railroad
81 and the Missouri department of transportation or an order issued by the
82 department of transportation ordering such construction.

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

Section B. Because immediate action is necessary to prevent illegal
2 student enrollment and to promote legal foreign student enrollment in the
3 upcoming summer educational sessions, and to prevent the disqualification of
4 legitimate public works contractors, section A of this act is deemed necessary for
5 the immediate preservation of the public health, welfare, peace, and safety, and
6 is hereby declared to be an emergency act within the meaning of the constitution,
7 and section A of this act shall be in full force and effect upon its passage and
8 approval.

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