

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
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:

1       Section A. Sections 208.009, 285.530, 285.555, and 292.675,  
2       RSMo, are repealed and five new sections enacted in lieu thereof,  
3       to be known as sections 173.1110, 208.009, 285.530, 285.555, and  
4       292.675, to read as follows:

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

11      2. The following documents, in hard copy or electronic  
12      form, may be used to document that a covered student is a United  
13      States citizen, permanent resident, or is lawfully present in the  
14      United States:

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

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

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

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

8       (5) A United States birth certificate;

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

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

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

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

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

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

27       208.009. 1. No alien unlawfully present in the United  
28       States shall receive any state or local public benefit, except

1 for state or local public benefits that may be offered under 8  
2 U.S.C. 1621(b). Nothing in this section shall be construed to  
3 prohibit the rendering of emergency medical care, prenatal care,  
4 services offering alternatives to abortion, emergency assistance,  
5 or legal assistance to any person.

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

20 3. In addition to providing proof of other eligibility  
21 requirements, at the time of application for any state or local  
22 public benefit, an applicant who is eighteen years of age or  
23 older shall provide affirmative proof that the applicant is a  
24 citizen or a permanent resident of the United States or is  
25 lawfully present in the United States[, provided, however, that  
26 in the case of state grants and scholarships, such proof shall be  
27 provided before the applicant receives any state grant or  
28 scholarship]. Such affirmative proof shall include documentary

1 evidence recognized by the department of revenue when processing  
2 an application for a driver's license, a Missouri driver's  
3 license, as well as any document issued by the federal government  
4 that confirms an alien's lawful presence in the United States.  
5 In processing applications for public benefits, an employee of an  
6 agency of state or local government shall not inquire about the  
7 legal status of a custodial parent or guardian applying for a  
8 public benefit on behalf of his or her dependent child who is a  
9 citizen or permanent resident of the United States.

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

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

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

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

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

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

27           8. Any agency that administers public benefits shall  
28 provide assistance in obtaining appropriate documentation to

1 persons applying for public benefits who sign the affidavit  
2 required by subsection 4 of this section stating they are  
3 eligible for such benefits but lack the documents required under  
4 subsection 3 of this section.

5 285.530. 1. No business entity or employer shall knowingly  
6 employ, hire for employment, or continue to employ an  
7 unauthorized alien to perform work within the state of Missouri.

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

1 storms, floods, tornadoes, severe weather, earthquakes, hazardous  
2 material incidents, nuclear power plant accidents, other  
3 radiological hazards, and major mechanical failures of a public  
4 utility facility.

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

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

16         5. A general contractor or subcontractor of any tier shall  
17 not be liable under sections 285.525 to 285.550 when such general  
18 contractor or subcontractor contracts with its direct  
19 subcontractor who violates subsection 1 of this section, if the  
20 contract binding the contractor and subcontractor affirmatively  
21 states that the direct subcontractor is not knowingly in  
22 violation of subsection 1 of this section and shall not  
23 henceforth be in such violation and the contractor or  
24 subcontractor receives a sworn affidavit under the penalty of  
25 perjury attesting to the fact that the direct subcontractor's  
26 employees are lawfully present in the United States.

27         285.555. Should the federal government discontinue or fail  
28 to authorize or implement any federal work authorization program,

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

9       292.675. 1. As used in this section, the following terms  
10 shall mean:

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

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

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

18       (4) "On-site employee", laborers, workmen, drivers,  
19 equipment operators, and craftsmen employed by contractors and  
20 subcontractors to be directly engaged in construction at the site  
21 of the public works. "Directly engaged in construction" shall  
22 mean work performed in the actual erection of the structure or  
23 completion of the improvement constituting the public works. In  
24 addition, employees working at a nearby or adjacent facility used  
25 by the contractor or subcontractor for construction of the public  
26 works shall be deemed "on-site employees". Persons engaged  
27 solely in the transportation of materials, fuel, or equipment to  
28 the site of the public works shall not be deemed to be "directly



1 engaged in construction;

2        [(3)] (5) "Person", any natural person, joint venture,  
3 partnership, corporation, or other business or legal entity;

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

8        [(5)] (7) "Public works", all fixed works constructed for  
9 public use or benefit or paid for wholly or in part out of public  
10 funds. "Public works" includes any work done directly by any  
11 public utility company when performed by it pursuant to the order  
12 of the public service commission or other public authority  
13 whether or not it be done under public supervision or direction  
14 or paid for wholly or in part out of public funds when let to  
15 contract by said utility;

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

19        2. Any [person signing a contract to work on the  
20 construction of public works] contractor for any public body for  
21 purposes of construction of public works and any subcontractor to  
22 such contractor shall provide a ten-hour Occupational Safety and  
23 Health Administration (OSHA) construction safety program for  
24 their on-site employees which includes a course in construction  
25 safety and health approved by OSHA or a similar program approved  
26 by the department which is at least as stringent as an approved  
27 OSHA program, unless such employees have previously completed the  
28 required program. All employees who have not previously

1 completed the program are required to complete the program within  
2 sixty days of beginning work on such construction project. The  
3 period for completion of the program shall expire sixty days  
4 after the first day the employee works on the public works  
5 project regardless of whether the employee works exclusively on  
6 that project in the following fifty-nine days.

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

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

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

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

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

1 department shall be entitled to recover its actual cost of  
2 enforcement in addition to such penalty amount.

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

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

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

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

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

1 prevent the disqualification of legitimate public works  
2 contractors, section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace, and  
4 safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and section A of this act shall be  
6 in full force and effect upon its passage and approval.