

SECOND REGULAR SESSION

HOUSE BILL NO. 2418

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NOLTE.

5476L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 285.530, 285.535, and 285.555, RSMo, and to enact in lieu thereof three new sections relating to required participation in a federal work authorization program.

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

Section A. Sections 285.530, 285.535, and 285.555, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 285.530, 285.535, and 285.555, to read as follows:

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

2. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Any entity contracting with the state or any political subdivision of the state shall only be required to provide the affidavits required in this subsection to the state and any political subdivision of the state with which it contracts, on an annual basis.

3. During or immediately after an emergency, [the requirements of this subsection] **the requirement under subsection 1 of this section** that a business entity enroll and participate in

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.

17 a federal work authorization program [shall be suspended for fifteen working days] **does not**
18 **apply to any business entity awarded a contract of fifty thousand dollars or less for**
19 **supplies and materials used in connection with the emergency. The requirement under**
20 **subsection 1 of this section that a business entity execute an affidavit affirming that the**
21 **business does not knowingly employ any person who is an unauthorized alien in connection**
22 **with the contracted services still applies.** As used in this subsection, an "emergency" is a
23 **situation that threatens life, personal safety, property, the environment, or vital public**
24 **services or resources, and includes but is not limited to** the following natural and manmade
25 disasters: major snow and ice storms, **fires**, floods, tornadoes, severe weather, earthquakes,
26 hazardous material incidents, nuclear power plant accidents, other **chemical**, radiological, or
27 **biological** hazards, or **spills, power outages, and other** major mechanical failures of a public
28 utility facility **or infrastructure.**

29 [3.] **4.** All public employers shall enroll and actively participate in a federal work
30 authorization program.

31 [4.] **5.** An employer may enroll and participate in a federal work authorization program
32 and shall verify the employment eligibility of every employee in the employer's hire whose
33 employment commences after the employer enrolls in a federal work authorization program. The
34 employer shall retain a copy of the dated verification report received from the federal
35 government. Any business entity that participates in such program shall have an affirmative
36 defense that such business entity has not violated subsection 1 of this section.

37 [5.] **6.** A general contractor or subcontractor of any tier shall not be liable under sections
38 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct
39 subcontractor who violates subsection 1 of this section, if the contract binding the contractor and
40 subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of
41 subsection 1 of this section and shall not henceforth be in such violation and the contractor or
42 subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the
43 direct subcontractor's employees are lawfully present in the United States.

44 **7. Neither subsection 2 or subsection 6 of this section require that a subcontractor**
45 **enroll and participate in a federal work authorization program if the contract binding the**
46 **subcontractor affirmatively states that the subcontractor is not knowingly in violation of**
47 **subsection 1 of this section and henceforth shall not be in violation, and the subcontractor**
48 **provides a sworn affidavit under the penalty of perjury attesting to the fact that the**
49 **subcontractor's employees are lawfully present in the United States.**

285.535. 1. The attorney general shall enforce the requirements of sections 285.525 to
2 285.550.

3 2. An enforcement action shall be initiated by means of a written, signed complaint
4 under penalty of perjury as defined in section 575.040, RSMo, to the attorney general submitted
5 by any state official, business entity, or state resident. A valid complaint shall include an
6 allegation which describes the alleged violator as well as the actions constituting the violation,
7 and the date and location where such actions occurred. A complaint which alleges a violation
8 solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and
9 shall not be enforced.

10 3. Upon receipt of a valid complaint, the attorney general shall, within fifteen business
11 days, request identity information from the business entity regarding any persons alleged to be
12 unauthorized aliens. Such request shall be made by certified mail. The attorney general shall
13 direct the applicable municipal or county governing body to suspend any applicable license,
14 permit, or exemptions of any business entity which fails, within fifteen business days after
15 receipt of the request, to provide such information.

16 4. The attorney general, after receiving the requested identity information from the
17 business entity, shall submit identity data required by the federal government to verify, under 8
18 U.S.C. 1373, the immigration status of such persons, and shall provide the business entity with
19 written notice of the results of the verification request:

20 (1) If the federal government notifies the attorney general that an employee is authorized
21 to work in the United States, the attorney general shall take no further action on the complaint;

22 (2) If the federal government notifies the attorney general that an employee is not
23 authorized to work in the United States, the attorney general shall proceed on the complaint as
24 provided in subsection 5 of this section;

25 (3) If the federal government notifies the attorney general that it is unable to verify
26 whether an employee is authorized to work in the United States, the attorney general shall take
27 no further action on the complaint until a verification from the federal government concerning
28 the status of the individual is received. At no point shall any state official attempt to make an
29 independent determination of any alien's legal status without verification from the federal
30 government.

31 5. (1) If the federal government notifies the attorney general that an employee is not
32 authorized to work in the United States, and the employer of the unauthorized alien participates
33 in a federal work authorization program, there shall be a rebuttable presumption that the
34 employer has met the requirements for an affirmative defense under subsection [4] **5** of section
35 285.530, and the employer shall comply with subsection 6 of this section.

36 (2) If the federal government notifies the attorney general that an employee is not
37 authorized to work in the United States, the attorney general shall bring a civil action in **the**

38 **circuit court of** Cole County if the attorney general reasonably believes the business entity
39 knowingly violated subsection 1 of section 285.530:

40 (a) If the court finds that a business entity did not knowingly violate subsection 1 of
41 section 285.530, the employer shall have fifteen business days to comply with subdivision (1)
42 and paragraph (a) of subdivision (2) of subsection 6 of this section. If the entity fails to do so,
43 the court shall direct the applicable municipal or county governing body to suspend the business
44 permit, if such exists, and any applicable licenses or exemptions of the entity until the entity
45 complies with subsection 6 of this section;

46 (b) If the court finds that a business entity knowingly violated subsection 1 of section
47 285.530, the court shall direct the applicable municipal or county governing body to suspend the
48 business permit, if such exists, and any applicable licenses or exemptions of such business entity
49 for fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply
50 with subsection 6 of this section at the end of the fourteen-day period.

51 6. The correction of a violation with respect to the employment of an unauthorized alien
52 shall include the following actions:

53 (1) (a) The business entity terminates the unauthorized alien's employment. If the
54 business entity attempts to terminate the unauthorized alien's employment and such termination
55 is challenged in a court of the state of Missouri, the fifteen-business-day period for providing
56 information to the attorney general referenced in subsection 3 of this section shall be tolled while
57 the business entity pursues the termination of the unauthorized alien's employment in such
58 forum; or

59 (b) The business entity, after acquiring additional information from the employee,
60 requests a secondary or additional verification by the federal government of the employee's
61 authorization, under the procedures of a federal work authorization program. While this
62 verification is pending, the fifteen-business-day period for providing information to the attorney
63 general referenced in subsection 3 of this section shall be tolled; and

64 (2) A legal representative of the business entity submits, at an office designated by the
65 attorney general, the following:

66 (a) A sworn affidavit stating that the violation has ended that shall include a description
67 of the specific measures and actions taken by the business entity to end the violation, and the
68 name, address, and other adequate identifying information for any unauthorized aliens related
69 to the complaint; and

70 (b) Documentation acceptable to the attorney general which confirms that the business
71 entity has enrolled in and is participating in a federal work authorization program.

72 7. The suspension of a business license or licenses under subsection 5 of this section
73 shall terminate one business day after a legal representative of the business entity submits the

74 affidavit and other documentation required under subsection 6 of this section following any
75 period of restriction required under subsection 5 of this section.

76 8. For an entity that violates subsection 1 of section 285.530 for a second time, the court
77 shall direct the applicable municipal or county governing body to suspend, for one year, the
78 business permit, if such exists, and any applicable license or exemptions of the business entity.
79 For a subsequent violation, the court shall direct the applicable municipal or county governing
80 body to forever suspend the business permit, if such exists, and any applicable license or
81 exemptions of the business entity.

82 9. In addition to the penalties in subsections 5 and 8 of this section:

83 (1) Upon the first violation of subsection 1 of section 285.530 by any business entity
84 awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or
85 loan from the state, the business entity shall be deemed in breach of contract and the state may
86 terminate the contract and suspend or debar the business entity from doing business with the state
87 for a period of three years. Upon such termination, the state may withhold up to twenty-five
88 percent of the total amount due to the business entity;

89 (2) Upon a second or subsequent violation of subsection 1 of section 285.530 by any
90 business entity awarded a state contract or grant or receiving a state-administered tax credit, tax
91 abatement, or loan from the state, the business entity shall be deemed in breach of contract and
92 the state may terminate the contract and permanently suspend or debar the business entity from
93 doing business with the state. Upon such termination, the state may withhold up to twenty-five
94 percent of the total amount due to the business entity.

95 10. Sections 285.525 to 285.550 shall not be construed to deny any procedural
96 mechanisms or legal defenses included in a federal work authorization program.

97 11. Any business entity subject to a complaint and subsequent enforcement under
98 sections 285.525 to 285.540, or any employee of such a business entity, may challenge the
99 enforcement of this section with respect to such entity or employee in the courts of the state of
100 Missouri.

101 12. If the court finds that any complaint is frivolous in nature or finds no probable cause
102 to believe that there has been a violation, the court shall dismiss the case. For purposes of this
103 subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to
104 be valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory,
105 and punitive damages to the alleged violator for holding the alleged violator before the public
106 in a false light. If the court finds that a complaint is frivolous or that there is not probable cause
107 to believe there has been a violation, the attorney general shall issue a public report to the
108 complainant and the alleged violator stating with particularity its reasons for dismissal of the

109 complaint. Upon such issuance, the complaint and all materials relating to the complaint shall
110 be a public record as defined in chapter 610, RSMo.

111 13. The determination of whether a worker is an unauthorized alien shall be made by the
112 federal government. A determination of such status of an individual by the federal government
113 shall create a rebuttable presumption as to that individual's status in any judicial proceedings
114 brought under this section or section 285.530. The court may take judicial notice of any
115 verification of an individual's status previously provided by the federal government and may
116 request the federal government to provide automated or testimonial verification.

117 14. Compensation, whether in money or in kind or in services, knowingly provided to
118 any unauthorized alien shall not be allowed as a business expense deduction from any income
119 or business taxes of this state.

120 15. Any business entity which terminates an employee in accordance with this section
121 shall not be liable for any claims made against the business entity under chapter 213, RSMo, for
122 the termination.

285.555. Should the federal government discontinue or fail to authorize or implement
2 any federal work authorization program, then subsections 2 and [3] 4 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 discontinuance
5 or failure to authorize or implement, and the general assembly shall review sections 285.525 to
6 285.555 for the purpose of determining whether the sections are no longer applicable and should
7 be repealed.

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