

SECOND REGULAR SESSION

# HOUSE BILL NO. 2228

## 97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CURTIS.

6483H.02I

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 federal work authorization programs.

*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Section A. Sections 285.530, 285.535, and 285.555, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 285.530, 285.535, and 285.555, to read as follows: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] **affirm** 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] **affidavit** required in this subsection to the state and any political subdivision of the state with which it contracts, on an annual basis. [During or immediately after an emergency, the requirements of this 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,

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 "emergency" includes the following natural and manmade disasters: major snow and ice storms,  
18 floods, tornadoes, severe weather, earthquakes, hazardous material incidents, nuclear power plant  
19 accidents, other radiological hazards, and major mechanical failures of a public utility facility.]

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

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

28 [5.] 4. A general contractor or subcontractor of any tier shall not be liable under sections  
29 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct  
30 subcontractor who violates subsection 1 of this section, if the contract binding the contractor and  
31 subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of  
32 subsection 1 of this section and shall not henceforth be in such violation and the contractor or  
33 subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the  
34 direct 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 to the attorney general submitted by any  
5 state official, business entity, or state resident. A valid complaint shall include an allegation  
6 which describes the alleged violator as well as the actions constituting the violation, and the date  
7 and location where such actions occurred. A complaint which alleges a violation solely or  
8 primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not  
9 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] 3 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.

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 for the  
122 termination.

          285.555. Should the federal government discontinue or fail to authorize or implement  
2 any federal work authorization program, then [subsections] **subsection 2** [and 3] of section

3 285.530 and paragraph (b) of subdivision (1) of subsection 6 of section 285.535 and paragraph  
4 (b) of 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.

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