House _____ **Amendment NO.**____

Offered By

_____ _____

AMEND House Bill No. 1397, Page 1, Section 285.056, Line 14, by inserting immediately after said section and line the following:

"285.530. 1. No business entity or employer, public or private, 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. 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, "emergency" includes the following natural and manmade disasters: major snow and ice storms, floods, tornadoes, severe weather, earthquakes, hazardous material incidents, nuclear power plant accidents, other radiological hazards, and major mechanical failures of a public utility facility.~~

~~3.~~**]** All **[**~~public~~**]** employers, public or private, and business entities shall enroll and actively participate in a federal work authorization program.

[~~4.~~**]** 3. An employer **[**~~may enroll and participate in a federal work authorization program and~~**]** or business entity shall verify the employment eligibility of every employee in the employer's or business entity's hire whose employment commences after the employer or business entity enrolls in a federal work authorization program. The employer or business entity shall retain a copy of the dated verification report received from the federal government. **[**~~Any~~**]** A business entity **[**~~that participates~~**]** enrolling and participating in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section.

[~~5.~~**]** 4. A general contractor or subcontractor of any tier shall not be liable under sections 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the 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 285.550.

2. An enforcement action shall be initiated by means of a written, signed complaint under penalty of perjury as defined in section 575.040 to the attorney general submitted by any state official, business entity, or state resident. A valid complaint shall include an allegation which describes the alleged violator as well as the actions constituting the violation, and the date and location where such actions occurred. A complaint

Action Taken_____ Date _____

which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

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

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

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

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

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

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

~~(2)~~**]** If the federal government notifies the attorney general that an employee is not authorized to work in the United States, the attorney general shall bring a civil action in the circuit court of Cole County if the attorney general reasonably believes the business entity **[**~~knowingly~~**]** violated subsection 1 of section 285.530**[**~~:~~

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

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

(1) Upon a finding of a first violation of section 285.530 by a business entity, the court shall order the suspension of all licenses that are held by the business entity for a minimum of one day and a maximum of thirty days.

(2) Upon a finding of a second violation of section 285.530 by a business entity, the court shall order the suspension of all licenses that are held by the business entity for a minimum of thirty days and a maximum of one year.

(3) Upon a finding of a third violation of section 285.530 by a business entity, the court shall order the permanent suspension of all licenses that are held by the business entity as well as the revocation of the business entity's registration as a corporation, limited liability company, or limited partnership in the state of Missouri, if applicable.

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

~~(1) (a) The business entity terminates the unauthorized alien's employment. If the business entity~~

~~attempts to terminate the unauthorized alien's employment and such termination is challenged in a court of the state of Missouri, the fifteen-business-day period for providing information to the attorney general referenced in subsection 3 of this section shall be tolled while the business entity pursues the termination of the unauthorized alien's employment in such forum; or~~

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

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

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

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

~~7. The suspension of a business license or licenses under subsection 5 of this section shall terminate one business day after a legal representative of the business entity submits the affidavit and other documentation required under subsection 6 of this section following any period of restriction required under subsection 5 of this section.~~

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

~~9.~~**]** In addition to the penalties in **[**~~subsections~~**]** subsection 5 **[**~~and 8~~**]** of this section:

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

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

[~~10.~~**]** 7. Sections 285.525 to 285.550 shall not be construed to deny any procedural mechanisms or legal defenses included in a federal work authorization program.

[~~11.~~**]** 8. Any business entity subject to a complaint and subsequent enforcement under sections 285.525 to 285.540, or any employee of such a business entity, may challenge the enforcement of this section with respect to such entity or employee in the courts of the state of Missouri.

[~~12.~~**]** 9. If the court finds that any complaint is frivolous in nature or finds no probable cause to believe that there has been a violation, the court shall dismiss the case. For purposes of this subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to be valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory, and punitive damages to the alleged violator for holding the alleged violator before the public in a false light. If the court finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the attorney general shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 610.

[~~13.~~**]** 10. The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section or

section 285.530. The court may take judicial notice of any verification of an individual's status previously provided by the federal government and may request the federal government to provide automated or testimonial verification.

[~~14.~~**]** 11. Compensation, whether in money or in kind or in services, **[**~~knowingly~~**]** provided to any unauthorized alien shall not be allowed as a business expense deduction from any income or business taxes of this state.

[~~15.~~**]** 12. Any business entity which terminates an employee in accordance with this section shall not be liable for any claims made against the business entity under chapter 213 for the termination.

13. Any costs incurred by the business entity for participating in a federal work authorization program may be deducted from the business entity's income or business taxes in this state.

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

Section B. The repeal and reenactment of sections 285.530, 285.535, and 285.555 of this act shall become effective January 1, 2019."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.