

SECOND REGULAR SESSION

# HOUSE BILL NO. 2366

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VERNETTI.

5876H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal sections 285.530, 285.535, 285.543, and 285.550, RSMo, and to enact in lieu thereof two new sections relating to employment, with penalty provisions.

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

Section A. Sections 285.530, 285.535, 285.543, and 285.550, RSMo, are repealed  
2 and two new sections enacted in lieu thereof, to be known as sections 285.530 and 285.535, to  
3 read as follows:

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

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

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

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

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

29 5. A general contractor or subcontractor of any tier shall ~~not~~ be liable under sections  
30 285.525 to ~~[285.550]~~ **285.555** when such general contractor or subcontractor contracts with  
31 its direct subcontractor who violates subsection 1 of this section, if the ~~[contract binding the~~  
32 ~~contractor and subcontractor affirmatively states that the direct subcontractor is not~~  
33 ~~knowingly in violation of subsection 1 of this section and shall not henceforth be in such~~  
34 ~~violation and the contractor or subcontractor receives a sworn affidavit under the penalty of~~  
35 ~~perjury attesting to the fact that the direct subcontractor's employees are lawfully present in~~  
36 ~~the United States]~~ **general contractor or subcontractor knows or should have known of**  
37 **such violation.**

285.535. 1. The attorney general shall enforce the requirements of sections 285.525  
2 to ~~[285.550]~~ **285.555**.

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~~  
5 ~~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~~  
7 ~~violation, and the date and location where such actions occurred. A complaint which alleges~~  
8 ~~a violation solely or primarily on the basis of national origin, ethnicity, or race shall be~~  
9 ~~deemed invalid and shall not be enforced.~~

10 3. ~~Upon receipt of a valid complaint, the attorney general shall, within fifteen~~  
11 ~~business days, request identity information from the business entity regarding any persons~~  
12 ~~alleged to be unauthorized aliens. Such request shall be made by certified mail. The attorney~~  
13 ~~general shall direct the applicable municipal or county governing body to suspend any~~  
14 ~~applicable license, permit, or exemptions of any business entity which fails, within fifteen~~  
15 ~~business days after 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~~  
18 ~~8 U.S.C. 1373, the immigration status of such persons, and shall provide the business entity~~  
19 ~~with written notice of the results of the verification request:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84 ~~(1) Upon the first violation of subsection 1 of section 285.530 by any business entity~~  
85 ~~awarded a state contract or grant or receiving a state-administered tax credit, tax abatement,~~  
86 ~~or loan from the state, the business entity shall be deemed in breach of contract and the state~~  
87 ~~may terminate the contract and suspend or debar the business entity from doing business with~~

88 the state for a period of three years. Upon such termination, the state may withhold up to  
89 twenty five percent of the total amount due to the business entity;

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

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

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

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

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

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

121 15. Any business entity which terminates an employee in accordance with this section  
122 shall not be liable for any claims made against the business entity under chapter 213 for the  
123 termination] **The attorney general may investigate alleged or suspected violations of**  
124 **sections 285.500 to 285.515 and shall have all powers provided by sections 407.040 to**

125 **407.090 in connection with any investigation of an alleged or suspected violation of**  
126 **sections 285.525 to 285.555.**

127 **3. In any action brought under this section, the state shall have the burden of**  
128 **proving by a preponderance of the evidence that the employer knowingly employed,**  
129 **hired for employment, or continued to employ an unauthorized alien to perform work**  
130 **within the state of Missouri.**

131 **4. Whenever the attorney general has reason to believe that an employer is**  
132 **engaging in any conduct that would be a violation of sections 285.525 to 285.555, the**  
133 **attorney general may seek an injunction prohibiting the employer from engaging in**  
134 **such conduct, and seek monetary damages in the amount equal to twice the amount of**  
135 **wages paid by the employer to any unauthorized alien workers during the time in which**  
136 **such unlawful employment is alleged to have occurred. The attorney general may bring**  
137 **an action for injunctive and monetary relief in the circuit court of any county where the**  
138 **alleged violation is occurring or about to occur, or in the Cole County circuit court.**

139 **5. If a court determines that an employer has knowingly hired an unauthorized**  
140 **alien, the court shall enter a judgment in favor of the state and award penalties in an**  
141 **amount consistent with the prayer for relief in the petition. The attorney general may**  
142 **enter into a consent judgment with any person alleged to have violated sections 285.525**  
143 **to 285.555.**

2 ~~[285.543. The attorney general shall maintain a database that~~  
3 ~~documents any business entity whose permit, license, or exemption has been~~  
4 ~~suspended or state contract has been terminated.]~~

2 ~~[285.550. If any municipal or county governing body fails to suspend~~  
3 ~~the business permit, if such exists, and applicable licenses or exemptions as~~  
4 ~~directed by the attorney general as a result of a violation of section 285.530 or~~  
5 ~~285.535 within fifteen days after notification by the attorney general, the~~  
6 ~~municipality shall be deemed to have adopted a sanctuary policy as defined in~~  
7 ~~section 67.307 and shall be subject to the penalties thereunder.]~~

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