

# SENATE BILL NO. 1288

## 103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (15).

3381S.011

KRISTINA MARTIN, Secretary

### 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.

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

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2 285.550, RSMo, are repealed and two new sections enacted in  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

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

5 2. As a condition for the award of any contract or  
6 grant in excess of five thousand dollars by the state or by  
7 any political subdivision of the state to a business entity,  
8 or for any business entity receiving a state-administered or  
9 subsidized tax credit, tax abatement, or loan from the  
10 state, the business entity shall, by sworn affidavit and  
11 provision of documentation, affirm its enrollment and  
12 participation in a federal work authorization program with  
13 respect to the employees working in connection with the  
14 contracted services. Every such business entity shall also  
15 sign an affidavit affirming that it does not knowingly  
16 employ any person who is an unauthorized alien in connection

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 with the contracted services. Any entity contracting with  
18 the state or any political subdivision of the state shall  
19 only be required to provide the affidavits required in this  
20 subsection to the state and any political subdivision of the  
21 state with which it contracts, on an annual basis. During  
22 or immediately after an emergency, the requirements of this  
23 subsection that a business entity enroll and participate in  
24 a federal work authorization program shall be suspended for  
25 fifteen working days. As used in this subsection,  
26 "emergency" includes the following natural and manmade  
27 disasters: major snow and ice storms, floods, tornadoes,  
28 severe weather, earthquakes, hazardous material incidents,  
29 nuclear power plant accidents, other radiological hazards,  
30 and major mechanical failures of a public utility facility.

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

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

43 5. A general contractor or subcontractor of any tier  
44 shall [not] be liable under sections 285.525 to 285.550 when  
45 such general contractor or subcontractor contracts with its  
46 direct subcontractor who violates subsection 1 of this  
47 section, if the [contract binding the contractor and  
48 subcontractor affirmatively states that the direct

49 subcontractor is not knowingly in violation of subsection 1  
50 of this section and shall not henceforth be in such  
51 violation and the contractor or subcontractor receives a  
52 sworn affidavit under the penalty of perjury attesting to  
53 the fact that the direct subcontractor's employees are  
54 lawfully present in the United States] **general contractor or**  
55 **subcontractor knows or should have known of such violation.**

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

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

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

23 4. The attorney general, after receiving the requested  
24 identity information from the business entity, shall submit  
25 identity data required by the federal government to verify,

26 under 8 U.S.C. 1373, the immigration status of such persons,  
27 and shall provide the business entity with written notice of  
28 the results of the verification request:

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

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

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

46 5. (1) If the federal government notifies the  
47 attorney general that an employee is not authorized to work  
48 in the United States, and the employer of the unauthorized  
49 alien participates in a federal work authorization program,  
50 there shall be a rebuttable presumption that the employer  
51 has met the requirements for an affirmative defense under  
52 subsection 4 of section 285.530, and the employer shall  
53 comply with subsection 6 of this section.

54 (2) If the federal government notifies the attorney  
55 general that an employee is not authorized to work in the  
56 United States, the attorney general shall bring a civil  
57 action in Cole County if the attorney general reasonably

58 believes the business entity knowingly violated subsection 1  
59 of section 285.530:

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

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

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

82 (1) (a) The business entity terminates the  
83 unauthorized alien's employment. If the business entity  
84 attempts to terminate the unauthorized alien's employment  
85 and such termination is challenged in a court of the state  
86 of Missouri, the fifteen-business-day period for providing  
87 information to the attorney general referenced in subsection  
88 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 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. 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.

152 11. Any business entity subject to a complaint and  
153 subsequent enforcement under sections 285.525 to 285.540, or  
154 any employee of such a business entity, may challenge the  
155 enforcement of this section with respect to such entity or  
156 employee in the courts of the state of Missouri.

157 12. If the court finds that any complaint is frivolous  
158 in nature or finds no probable cause to believe that there  
159 has been a violation, the court shall dismiss the case. For  
160 purposes of this subsection, "frivolous" shall mean a  
161 complaint not shown by clear and convincing evidence to be  
162 valid. Any person who submits a frivolous complaint shall  
163 be liable for actual, compensatory, and punitive damages to  
164 the alleged violator for holding the alleged violator before  
165 the public in a false light. If the court finds that a  
166 complaint is frivolous or that there is not probable cause  
167 to believe there has been a violation, the attorney general  
168 shall issue a public report to the complainant and the  
169 alleged violator stating with particularity its reasons for  
170 dismissal of the complaint. Upon such issuance, the  
171 complaint and all materials relating to the complaint shall  
172 be a public record as defined in chapter 610.

173 13. The determination of whether a worker is an  
174 unauthorized alien shall be made by the federal government.  
175 A determination of such status of an individual by the  
176 federal government shall create a rebuttable presumption as  
177 to that individual's status in any judicial proceedings  
178 brought under this section or section 285.530. The court  
179 may take judicial notice of any verification of an  
180 individual's status previously provided by the federal  
181 government and may request the federal government to provide  
182 automated or testimonial verification.

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

187           15. Any business entity which terminates an employee  
188 in accordance with this section shall not be liable for any  
189 claims made against the business entity under chapter 213  
190 for the termination] **The attorney general may investigate**  
191 **alleged or suspected violations of sections 285.500 to**  
192 **285.515 and shall have all powers provided by sections**  
193 **407.040 to 407.090 in connection with any investigation of**  
194 **an alleged or suspected violation of sections 285.525 to**  
195 **285.555.**

196           3. In any action brought under this section, the state  
197 shall have the burden of proving by a preponderance of the  
198 evidence that the employer knowingly employed, hired for  
199 employment, or continued to employ an unauthorized alien to  
200 perform work within the state of Missouri.

201           4. Whenever the attorney general has reason to believe  
202 that an employer is engaging in any conduct that would be a  
203 violation of sections 285.525 to 285.555, the attorney  
204 general may seek an injunction prohibiting the employer from  
205 engaging in such conduct, and seek monetary damages in the  
206 amount equal to twice the amount of wages paid by the  
207 employer to any unauthorized alien workers during the time  
208 in which such unlawful employment is alleged to have  
209 occurred. The attorney general may bring an action for  
210 injunctive and monetary relief in the circuit court of any  
211 county where the alleged violation is occurring or about to  
212 occur, or in the Cole county circuit court.

213           5. If a court determines that an employer has  
214 knowingly hired an unauthorized alien, the court shall enter

215 a judgment in favor of the state and award penalties in an  
216 amount consistent with the prayer for relief in the  
217 petition. The attorney general may enter into a consent  
218 judgment with any person alleged to have violated sections  
219 285.525 to 285.555.

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

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

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