

SECOND REGULAR SESSION

SENATE BILL NO. 1288

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (15).

3381S.01I

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Section A. Sections 285.530, 285.535, 285.543, and 285.550, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 285.530 and 285.535, to read as follows: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 5. 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

89 pursues the termination of the unauthorized alien's
90 employment in such forum; or

91 (b) The business entity, after acquiring additional
92 information from the employee, requests a secondary or
93 additional verification by the federal government of the
94 employee's authorization, under the procedures of a federal
95 work authorization program. While this verification is
96 pending, the fifteen-business-day period for providing
97 information to the attorney general referenced in subsection
98 3 of this section shall be tolled; and

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

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

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

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

118 8. For an entity that violates subsection 1 of section
119 285.530 for a second time, the court shall direct the
120 applicable municipal or county governing body to suspend,

121 for one year, the business permit, if such exists, and any
122 applicable license or exemptions of the business entity.
123 For a subsequent violation, the court shall direct the
124 applicable municipal or county governing body to forever
125 suspend the business permit, if such exists, and any
126 applicable license or exemptions of the business entity.

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

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

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

149 10. Sections 285.525 to 285.550 shall not be construed
150 to deny any procedural mechanisms or legal defenses included
151 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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