

FIRST REGULAR SESSION

# HOUSE BILL NO. 104

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), SCHIEFFER, MEINERS,  
MEADOWS AND ROORDA (Co-sponsors).

0355L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 285.535, RSMo, and to enact in lieu thereof one new section relating to unauthorized aliens.

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

Section A. Section 285.535, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 285.535, to read as follows:

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, RSMo, 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 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. **A business entity that is the subject of an investigation shall cooperate in the investigation and the attorney general or prosecuting attorney shall have subpoena powers to obtain records or testimony related to the investigation.**

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,

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.

16 permit, or exemptions of any business entity which fails, within fifteen business days after  
17 receipt of the request, to provide such information.

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

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

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

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

33 5. (1) If the federal government notifies the attorney general that an employee is not  
34 authorized to work in the United States, and the employer of the unauthorized alien participates  
35 in a federal work authorization program, there shall be a rebuttable presumption that the  
36 employer has met the requirements for an affirmative defense under subsection 4 of section  
37 285.530, and the employer shall comply with subsection [6] 9 of this section.

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

42 (a) If the court finds that a business entity did not knowingly violate subsection 1 of  
43 section 285.530, the employer shall have fifteen business days to comply with subdivision (1)  
44 and paragraph (a) of subdivision (2) of subsection [6] 9 of this section. If the entity fails to do  
45 so, the court shall direct the applicable municipal or county governing body to suspend the  
46 business permit, if such exists, and any applicable licenses or exemptions of the entity until the  
47 entity complies with subsection [6] 9 of this section;

48 (b) If the court finds that a business entity knowingly violated subsection 1 of section  
49 285.530, the court shall direct the applicable municipal or county governing body to suspend the  
50 business permit, if such exists, and any applicable licenses or exemptions of such business entity

51 for [fourteen] up to fifteen days. In determining the appropriate time period, the court shall  
52 consider the following factors:

- 53 a. Number of unauthorized aliens employed;
- 54 b. Degree of harm resulting from the violation;
- 55 c. Whether the employer made good faith efforts to comply with any applicable  
56 requirements;
- 57 d. Duration of the violation;
- 58 e. Participation of directors, officers, or principals of the employer in the violation;
- 59 f. Any other factors the court deems appropriate.

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61 Permits, licenses, and exemptions shall be reinstated for entities who comply with subsection [6]  
62 9 of this section at the end of the [fourteen-day] time period.

63 6. If a court determines that an employer knowingly employed an unauthorized  
64 alien it shall, for the first violation:

65 (1) Order the business entity to a three-year probationary period which shall begin  
66 on the date the court enters the order;

67 (2) Order the business entity to file, during the probationary period, quarterly  
68 reports with the attorney general of each new employee who is hired by the business entity;

69 (3) Order the business entity to file a sworn affidavit with the court and the  
70 attorney general within three business days after the order is entered. The affidavit shall  
71 state the business entity has terminated the employment of all unauthorized aliens and the  
72 business entity will not knowingly employ an unauthorized alien.

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74 Any agency that has issued a license to that business entity shall receive notice of the  
75 probation.

76 7. If the business entity fails to file the sworn affidavit within three business days,  
77 as required under subdivision (3) of subsection 6 of this section, the court shall enjoin the  
78 business entity from transacting business in the state until the business entity files the  
79 affidavit. Once the affidavit is filed, the court shall order the injunction to be lifted  
80 immediately.

81 8. If a court finds that a business entity knowingly employed an unauthorized alien  
82 while on probation, it shall issue an injunction permanently enjoining the business entity  
83 from transacting business in this state. Any agency that has issued a license to that  
84 employer shall receive notice of the injunction.

85 9. The correction of a violation with respect to the employment of an unauthorized alien  
86 shall include the following actions:

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

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

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

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

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

106 [7.] **10.** The suspension of a business license or licenses under subsection 5 of this  
107 section shall terminate one business day after a legal representative of the business entity submits  
108 the affidavit and other documentation required under subsection [6] **9** of this section following  
109 any period of restriction required under subsection 5 of this section.

110 [8.] **11.** For an entity that violates subsection 1 of section 285.530 for a second time, the  
111 court shall direct the applicable municipal or county governing body to suspend, for one year,  
112 the business permit, if such exists, and any applicable license or exemptions of the business  
113 entity. For a subsequent violation, the court shall direct the applicable municipal or county  
114 governing body to forever suspend the business permit, if such exists, and any applicable license  
115 or exemptions of the business entity.

116 [9.] **12.** In addition to the penalties in subsections 5 to 8 and [8] **11** of this section:

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

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

129 [10.] **13.** Sections 285.525 to 285.550 shall not be construed to deny any procedural  
130 mechanisms or legal defenses included in a federal work authorization program.

131 [11.] **14.** Any business entity subject to a complaint and subsequent enforcement under  
132 sections 285.525 to 285.540, or any employee of such a business entity, may challenge the  
133 enforcement of this section with respect to such entity or employee in the courts of the state of  
134 Missouri.

135 [12.] **15.** If the court finds that any complaint is frivolous in nature or finds no probable  
136 cause to believe that there has been a violation, the court shall dismiss the case. For purposes  
137 of this subsection, "frivolous" shall mean a complaint not shown by clear and convincing  
138 evidence to be valid. Any person who submits a frivolous complaint shall be liable for actual,  
139 compensatory, and punitive damages to the alleged violator for holding the alleged violator  
140 before the public in a false light. If the court finds that a complaint is frivolous or that there is  
141 not probable cause to believe there has been a violation, the attorney general shall issue a public  
142 report to the complainant and the alleged violator stating with particularity its reasons for  
143 dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the  
144 complaint shall be a public record as defined in chapter 610, RSMo.

145 [13.] **16.** The determination of whether a worker is an unauthorized alien shall be made  
146 by the federal government. A determination of such status of an individual by the federal  
147 government shall create a rebuttable presumption as to that individual's status in any judicial  
148 proceedings brought under this section or section 285.530. The court may take judicial notice  
149 of any verification of an individual's status previously provided by the federal government and  
150 may request the federal government to provide automated or testimonial verification.

151 [14.] **17.** Compensation, whether in money or in kind or in services, knowingly provided  
152 to any unauthorized alien shall not be allowed as a business expense deduction from any income  
153 or business taxes of this state.

154 [15.] **18.** Any business entity which terminates an employee in accordance with this  
155 section shall not be liable for any claims made against the business entity under chapter 213,  
156 RSMo, for the termination.

157 **19. An individual who submits a complaint to the attorney general or prosecuting**  
158 **attorney regarding an employer's alleged violation of subsections 5 to 8 of this section may**

159 recover up to ten percent of any moneys recovered by the state for any violations  
160 committed by that employer.

161           **20. Beginning July 1, 2010, the department of labor and industrial relations shall,**  
162 **after reviewing relevant data regarding the employment of unauthorized aliens, determine**  
163 **which classification of employers shall be required to verify the immigration status of**  
164 **employees through a federal work authorization program.**

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