

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 390

95TH GENERAL ASSEMBLY

0766L.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 172.360, 174.130, 178.635, 178.780, 208.009, 285.530, 285.555, and 292.675, RSMo, and to enact in lieu thereof eleven new sections relating to unauthorized aliens, with an emergency clause.

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

Section A. Sections 172.360, 174.130, 178.635, 178.780, 208.009, 285.530, 285.555, 2 and 292.675, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known 3 as sections 172.360, 173.1110, 174.130, 175.025, 178.635, 178.780, 178.785, 208.009, 285.530, 4 285.555, and 292.675, to read as follows:

172.360. **1.** All youths, resident of the state of Missouri, shall be admitted to all the 2 privileges and advantages of the various classes of all the departments of the University of the 3 State of Missouri; provided, that each applicant for admission therein shall possess such 4 scholastic attainments and mental and moral qualifications as shall be prescribed in rules adopted 5 and established by the board of curators; **provided that aliens unlawfully present in the 6 United States shall not be eligible for enrollment in the university;** and provided further, that 7 the board of curators may charge and collect reasonable tuition and other fees necessary for the 8 maintenance and operation of all departments of the university, as they may deem necessary.

**2. Prior to approval of any appropriations by the general assembly for the 9 University of Missouri, the department of higher education shall annually certify to the 10 education appropriations committee of the house of representatives and the appropriations 11 committee of the senate that each campus of the University of Missouri has not knowingly 12 enrolled any aliens unlawfully present in the United States in the preceding year. 13**

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.

173.1110. 1. No covered student unlawfully present in the United States shall receive a postsecondary education public benefit. Educational institutions awarding postsecondary education public benefits to covered students shall verify that these students are United States citizens, permanent residents, or lawfully present in the United States.

2. The following documents, in hard copy or electronic form, may be used to document that a covered student is a United States citizen, permanent resident, or is lawfully present in the United States:

(1) The Free Application for Student Aid Institutional Student Information Record;

(2) A state-issued driver's license;

(3) A state-issued nondriver's identification card;

(4) Documentary evidence recognized by the department of revenue when processing an application for a driver's license or nondriver's identification card;

(5) A United States birth certificate;

(6) A United States military identification card; or

(7) Any document issued by the federal government that confirms an alien's lawful presence in the United States.

3. All postsecondary higher education institutions shall annually certify to the department of higher education that they have not knowingly awarded a postsecondary education public benefit to a covered student who is unlawfully present in the United States.

4. As used in this section, the following terms shall mean:

(1) "Covered student", a student eighteen years of age or older, who has graduated from high school and is attending classes on the campus of a postsecondary educational institution during regularly scheduled academic sessions;

(2) "Postsecondary education public benefit", institutional financial aid awarded by public postsecondary educational institutions and state-administered postsecondary grants and scholarships awarded by all postsecondary educational institutions to covered students.

174.130. 1. Each board may make such rules and regulations for the admission of students as may be deemed proper; provided that aliens unlawfully present in the United States shall not be eligible for enrollment in the university or college.

2. Prior to approval of any appropriations by the general assembly for the university or college, the department of higher education shall annually certify to the education appropriations committee of the house of representatives and the appropriations

7 **committee of the senate that each university or college has not knowingly enrolled any**  
8 **aliens unlawfully present in the United States in the preceding year.**

2 **175.025. 1. The board of curators of Lincoln University may make such rules and**  
3 **regulations for the admission of students as it may be deemed proper; provided that aliens**  
4 **unlawfully present in the United States shall not be eligible for enrollment in the university.**

5 **2. Prior to approval of any appropriations by the general assembly for the**  
6 **university, the department of higher education shall annually certify to the education**  
7 **appropriations committee of the house of representatives and the appropriations**  
8 **committee of the senate that the university has not knowingly enrolled any aliens**  
9 **unlawfully present in the United States in the preceding year.**

2 **178.635. 1. The board of regents of Linn State Technical College shall organize in the**  
3 **manner provided by law for the board of curators of the University of Missouri. The powers,**  
4 **duties, authority, responsibilities, privileges, immunities, liabilities and compensation of the**  
5 **board of Linn State Technical College in regard to Linn State Technical College shall be the**  
6 **same as those prescribed by statute for the board of curators of the University of Missouri in**  
7 **regard to the University of Missouri, except that Linn State Technical College shall be operated**  
8 **only as a state technical college. Nothing in this section shall be construed to authorize Linn**  
9 **State Technical College to become a community college or a university offering four-year or**  
10 **graduate degrees.**

11 **2. All lawful bonded indebtedness incurred by the issuance of revenue bonds, as defined**  
12 **in section 176.010, RSMo, by Linn Technical College, shall be deemed to be an indebtedness**  
13 **of the board of regents of Linn State Technical College after the date upon which the conditions**  
14 **of section 178.631 are met. Such indebtedness shall be retired through tuition revenues.**

15 **3. The board of regents may make such rules and regulations for the admission of**  
16 **students as it may be deemed proper; provided that aliens unlawfully present in the United**  
17 **States shall not be eligible for enrollment in Linn State Technical College.**

18 **4. Prior to approval of any appropriations by the general assembly for Linn State**  
19 **Technical College, the department of higher education shall annually certify to the**  
20 **education appropriations committee of the house of representatives and the appropriations**  
21 **committee of the senate that the college has not knowingly enrolled any aliens unlawfully**  
22 **present in the United States in the preceding year.**

2 **178.780. 1. Tax supported community colleges formed prior to October 13, 1961, and**  
3 **those formed under the provisions of sections 178.770 to 178.890 shall be under the supervision**  
4 **of the coordinating board for higher education.**

5 **2. The coordinating board for higher education shall:**

6 **(1) Establish the role of the two-year college in the state;**

- 6 (2) Set up a survey form to be used for local surveys of need and potential for two-year  
7 colleges; provide supervision in the conducting of surveys; require that the results of the studies  
8 be used in reviewing applications for approval; and establish and use the survey results to set up  
9 priorities;
- 10 (3) Require that the initiative to establish two-year colleges come from the area to be  
11 served;
- 12 (4) Administer the state financial support program;
- 13 (5) Supervise the community college districts formed under the provisions of sections  
14 178.770 to 178.890 and the community colleges now in existence and formed prior to October  
15 13, 1961;
- 16 (6) Formulate and put into effect uniform policies as to budgeting, record keeping, and  
17 student accounting;
- 18 (7) Establish uniform minimum entrance requirements and uniform curricular offerings  
19 for all community colleges **and ensure that aliens unlawfully present in the United States are**  
20 **not eligible for enrollment in any community college;**
- 21 (8) Make a continuing study of community college education in the state; and
- 22 (9) Be responsible for the accreditation of each community college under its supervision.  
23 Accreditation shall be conducted annually or as often as deemed advisable and made in a manner  
24 consistent with rules and regulations established and applied uniformly to all community colleges  
25 in the state. Standards for accreditation of community colleges shall be formulated with due  
26 consideration given to curriculum offerings and entrance requirements of the University of  
27 Missouri.

**178.785. Prior to approval of any appropriations by the general assembly for a  
2 community college, the department of higher education shall annually certify to the  
3 education appropriations committee of the house of representatives and the appropriations  
4 committee of the senate that the community college has not knowingly enrolled any aliens  
5 unlawfully present in the United States in the preceding year.**

208.009. 1. No alien unlawfully present in the United States shall receive any state or  
2 local public benefit, except for state or local public benefits that may be offered under 8 U.S.C.  
3 1621(b). Nothing in this section shall be construed to prohibit the rendering of emergency  
4 medical care, prenatal care, services offering alternatives to abortion, emergency assistance, or  
5 legal assistance to any person.

6 2. As used in this section, "public benefit" means any grant, contract, or loan provided  
7 by an agency of state or local government; or any retirement, welfare, health, [postsecondary  
8 education, state grants and scholarships,] disability, housing, or food assistance benefit under  
9 which payments, assistance, credits, or reduced rates or fees are provided. The term "public

10 benefit" shall not include **postsecondary education public benefits as defined in section**  
11 **173.1110, RSMo, or contracts or agreements between public utility providers and their**  
12 **customers or** unemployment benefits payable under chapter 288, RSMo. The unemployment  
13 compensation program shall verify the lawful presence of an alien for the purpose of determining  
14 eligibility for benefits in accordance with its own procedures.

15 3. In addition to providing proof of other eligibility requirements, at the time of  
16 application for any state or local public benefit, an applicant who is eighteen years of age or older  
17 shall provide affirmative proof that the applicant is a citizen or a permanent resident of the  
18 United States or is lawfully present in the United States[, provided, however, that in the case of  
19 state grants and scholarships, such proof shall be provided before the applicant receives any state  
20 grant or scholarship]. Such affirmative proof shall include documentary evidence recognized  
21 by the department of revenue when processing an application for a driver's license, a Missouri  
22 driver's license, as well as any document issued by the federal government that confirms an  
23 alien's lawful presence in the United States. In processing applications for public benefits, an  
24 employee of an agency of state or local government shall not inquire about the legal status of a  
25 custodial parent or guardian applying for a public benefit on behalf of his or her dependent child  
26 who is a citizen or permanent resident of the United States.

27 4. An applicant who cannot provide the proof required under this section at the time of  
28 application may alternatively sign an affidavit under oath, attesting to either United States  
29 citizenship or classification by the United States as an alien lawfully admitted for permanent  
30 residence, in order to receive temporary benefits or a temporary identification document as  
31 provided in this section. The affidavit shall be on or consistent with forms prepared by the state  
32 or local government agency administering the state or local public benefits and shall include the  
33 applicant's Social Security number or any applicable federal identification number and an  
34 explanation of the penalties under state law for obtaining public assistance benefits fraudulently.

35 5. An applicant who has provided the sworn affidavit required under subsection 4 of this  
36 section is eligible to receive temporary public benefits as follows:

37 (1) For ninety days or until such time that it is determined that the applicant is not  
38 lawfully present in the United States, whichever is earlier; or

39 (2) Indefinitely if the applicant provides a copy of a completed application for a birth  
40 certificate that is pending in Missouri or some other state. An extension granted under this  
41 subsection shall terminate upon the applicant's receipt of a birth certificate or a determination  
42 that a birth certificate does not exist because the applicant is not a United States citizen.

43 6. An applicant who is an alien shall not receive any state or local public benefit unless  
44 the alien's lawful presence in the United States is first verified by the federal government. State  
45 and local agencies administering public benefits in this state shall cooperate with the United

46 States Department of Homeland Security in achieving verification of an alien's lawful presence  
47 in the United States in furtherance of this section. The system utilized may include the  
48 Systematic Alien Verification for Entitlements Program operated by the United States  
49 Department of Homeland Security. **After an applicant's lawful presence in the United States**  
50 **has been verified through the Systematic Alien Verification for Entitlements Program, no**  
51 **additional verification is required within the same agency of the state or local government.**

52 7. The provisions of this section shall not be construed to require any nonprofit  
53 organization [organized under] **duly registered with** the Internal Revenue [Code] **Service** to  
54 enforce the provisions of this section, nor does it prohibit such an organization from providing  
55 aid.

56 8. Any agency that administers public benefits shall provide assistance in obtaining  
57 appropriate documentation to persons applying for public benefits who sign the affidavit required  
58 by subsection 4 of this section stating they are eligible for such benefits but lack the documents  
59 required under subsection 3 of this section.

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 dollars  
5 by the state or by any political subdivision of the state to a business entity, or for any business  
6 entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the  
7 state, the business entity shall, by sworn affidavit and provision of documentation, affirm its  
8 enrollment and participation in a federal work authorization program with respect to the  
9 employees working in connection with the contracted services. Every such business entity shall  
10 also sign an affidavit affirming that it does not knowingly employ any person who is an  
11 unauthorized alien in connection with the contracted services. **During or immediately after an**  
12 **emergency, the requirements of this subsection that a business entity enroll and participate**  
13 **in a federal work authorization program shall be suspended for fifteen working days. As**  
14 **used in this subsection, "emergency" includes the following natural and manmade**  
15 **disasters: major snow and ice storms, floods, tornadoes, severe weather, earthquakes,**  
16 **hazardous material incidents, nuclear power plant accidents, other radiological hazards,**  
17 **and major mechanical failures of a public utility facility.**

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

20 4. An employer may enroll and participate in a federal work authorization program and  
21 shall verify the employment eligibility of every employee in the employer's hire whose  
22 employment commences after the employer enrolls in a federal work authorization program. The

23 employer shall retain a copy of the dated verification report received from the federal  
24 government. Any business entity that participates in such program shall have an affirmative  
25 defense that such business entity has not violated subsection 1 of this section.

26 5. A general contractor or subcontractor of any tier shall not be liable under sections  
27 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct  
28 subcontractor who violates subsection 1 of this section, if the contract binding the contractor and  
29 subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of  
30 subsection 1 of this section and shall not henceforth be in such violation and the contractor or  
31 subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the  
32 direct subcontractor's employees are lawfully present in the United States.

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

292.675. 1. As used in this section, the following terms shall mean:

- 2 (1) "Construction", construction, reconstruction, demolition, painting and decorating,  
3 or major repair;
  - 4 (2) "Department", the department of labor and industrial relations;
  - 5 (3) "Person", any natural person, joint venture, partnership, corporation, or other business  
6 or legal entity;
  - 7 (4) "Public body", the state of Missouri or any officer, official, authority, board or  
8 commission of the state, or other political subdivision thereof, or any institution supported in  
9 whole or in part by public funds;
  - 10 (5) "Public works", all fixed works constructed for public use or benefit or paid for  
11 wholly or in part out of public funds. "Public works" includes any work done directly by any  
12 public utility company when performed by it pursuant to the order of the public service  
13 commission or other public authority whether or not it be done under public supervision or  
14 direction or paid for wholly or in part out of public funds when let to contract by said utility.
- 15 2. Any person signing a contract to work on the construction of public works for any  
16 public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA)  
17 construction safety program [for their on-site employees] which includes a course in construction  
18 safety and health approved by OSHA or a similar program approved by the department which  
19 is at least as stringent as an approved OSHA program **for their on-site employees who have not**

20 **completed a program previously.** All employees **who have not completed a program**  
21 **previously** are required to complete the program within sixty days of beginning work on such  
22 construction project.

23 3. Any employee found on a work site subject to this section without documentation of  
24 the successful completion of the [course] **program** required under subsection 2 of this section  
25 shall be afforded twenty days to produce such documentation before being subject to removal  
26 from the project.

27 4. The public body shall specify the requirements of this section in the resolution or  
28 ordinance and in the call for bids for the contract. The contractor to whom the contract is  
29 awarded and any subcontractor under such contractor shall require all on-site employees to  
30 complete the ten-hour training program required under subsection 2 of this section **or to provide**  
31 **documentation of the previous successful completion of a program.** The public body  
32 awarding the contract shall include this requirement in the contract. The contractor shall forfeit  
33 as a penalty to the public body on whose behalf the contract is made or awarded, two thousand  
34 five hundred dollars plus one hundred dollars for each employee employed by the contractor or  
35 subcontractor, for each calendar day, or portion thereof, such employee is employed without the  
36 required training. The penalty shall not begin to accrue until the time period in subsections 2 and  
37 3 of this section have elapsed. The public body awarding the contract shall include notice of  
38 these penalties in the contract. The public body awarding the contract shall withhold and retain  
39 therefrom all sums and amounts due and owing as a result of any violation of this section when  
40 making payments to the contractor under the contract. The contractor may withhold from any  
41 subcontractor sufficient sums to cover any penalties the public body has withheld from the  
42 contractor resulting from the subcontractor's failure to comply with the terms of this section. If  
43 the payment has been made to the subcontractor without withholding, the contractor may recover  
44 the amount of the penalty resulting from the fault of the subcontractor in an action maintained  
45 in the circuit court in the county in which the public works project is located from the  
46 subcontractor.

47 5. In determining whether a violation of this section has occurred, and whether the  
48 penalty under subsection 4 of this section shall be imposed, the department shall investigate any  
49 claim of violation. Upon completing such investigation, the department shall notify the public  
50 body and any party found to be in violation of this section of its findings and whether a penalty  
51 shall be assessed. Determinations under this section may be appealed in the circuit court in the  
52 county in which the public works project is located.

53 6. If the contractor or subcontractor fails to pay the penalty within forty-five days  
54 following notification by the department, the department shall pursue an enforcement action to  
55 enforce the monetary penalty provisions of subsection 4 of this section against the contractor or

56 subcontractor found to be in violation of this section. If the court orders payment of the penalties  
57 as prescribed under subsection 4 of this section, the department shall be entitled to recover its  
58 actual cost of enforcement in addition to such penalty amount.

59         7. The department may establish rules and regulations for the purpose of implementing  
60 the provisions of this section. Any rule or portion of a rule, as that term is defined in section  
61 536.010, RSMo, that is created under the authority delegated in this section shall become  
62 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,  
63 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
64 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
65 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
66 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
67 after August 28, 2008, shall be invalid and void.

68         8. This section shall not apply to work performed by public utilities which are under the  
69 jurisdiction of the public service commission, or their contractors, or work performed at or on  
70 facilities owned or operated by said public utilities.

71         9. The provisions of this section shall not apply to rail grade crossing improvement  
72 projects where there exists a signed agreement between the railroad and the Missouri department  
73 of transportation or an order issued by the department of transportation ordering such  
74 construction.

75         10. This section shall take effect on August 28, 2009.

Section B. Because immediate action is necessary to prevent illegal student enrollment  
2 and to promote legal foreign student enrollment in the upcoming summer educational sessions,  
3 and to prevent the disqualification of legitimate public works contractors, section A of this act  
4 is deemed necessary for the immediate preservation of the public health, welfare, peace, and  
5 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and  
6 section A of this act shall be in full force and effect upon its passage and approval.

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