

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 1019, Page 1, in the Title, Lines 3-4, by
2 deleting "unlawful discriminatory practices" and inserting in lieu thereof "employers"; and

3
4 Further amend said bill, Section 213.111, Page 13, Line 54, by inserting the following after all of
5 said line:

6
7 "285.525. As used in sections 285.525 to 285.550, the following terms shall have the
8 following meanings:

9 (1) "Business entity", any person or group of persons performing or engaging in any activity,
10 enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business
11 entity" shall include but not be limited to self-employed individuals, partnerships, corporations,
12 contractors, and subcontractors. The term "business entity" shall include any business entity that
13 possesses a business permit, license, or tax certificate issued by the state, any business entity that is
14 exempt by law from obtaining such a business permit, and any business entity that is operating
15 unlawfully without such a business permit. The term "business entity" shall not include a
16 self-employed individual with no employees or entities utilizing the services of direct sellers as
17 defined in subdivision (17) of subsection 12 of section 288.034;

18 (2) ["Contractor", a person, employer, or business entity that enters into an agreement to
19 perform any service or work or to provide a certain product in exchange for valuable consideration.
20 This definition shall include but not be limited to a general contractor, subcontractor, independent
21 contractor, contract employee, project manager, or a recruiting or staffing entity;

22 (3) "Employee", any person performing work or service of any kind or character for hire
23 within the state of Missouri;

24 [(4)] (3) "Employer", any person or business entity employing any person for hire within the
25 state of Missouri, including a public employer. Where there are two or more putative employers, any
26 person or entity taking a business tax deduction for the employee in question shall be considered an
27 employer of that person for purposes of sections 285.525 to 285.550;

28 [(5)] (4) "Employment", the act of employing or state of being employed, engaged, or hired
29 to perform work or service of any kind or character within the state of Missouri;

30 (5) "E-Verify", the federal E-Verify program operated by the United States Department of
31 Homeland Security and other federal agencies or any successor or equivalent program used to verify

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1 the work authorization of newly hired employees pursuant to federal law;

2 (6) ["Federal work authorization program", any of the electronic verification of work
3 authorization programs operated by the United States Department of Homeland Security or an
4 equivalent federal work authorization program operated by the United States Department of
5 Homeland Security to verify information of newly hired employees, under the Immigration Reform
6 and Control Act of 1986 (IRCA), P.L.99-603;

7 (7) "Knowingly", a person acts knowingly or with knowledge:

8 (a) With respect to the person's conduct or to attendant circumstances when the person is
9 aware of the nature of the person's conduct or that those circumstances exist; or

10 (b) With respect to a result of the person's conduct when the person is aware that the person's
11 conduct is practically certain to cause that result;

12 (8) "Political subdivision", any agency or unit of this state which now is, or hereafter shall
13 be, authorized to levy taxes or empowered to cause taxes to be levied;

14 [(9)] (7) "Public employer", every department, agency, or instrumentality of the state or
15 political subdivision of the state;

16 [(10)] (8) "Unauthorized alien", an alien who does not have the legal right or authorization
17 under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

18 [(11)] (9) "Work", any job, task, employment, labor, personal services, or any other activity
19 for which compensation is provided, expected, or due, including but not limited to all activities
20 conducted by business entities.

21 285.530. 1. No [business entity or] employer, public or private, shall [knowingly] employ,
22 hire for employment, or continue to employ an unauthorized alien to perform work within the state
23 of Missouri.

24 2. [As a condition for the award of any contract or grant in excess of five thousand dollars by
25 the state or by any political subdivision of the state to a business entity, or for any business entity
26 receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the
27 business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and
28 participation in a federal work authorization program with respect to the employees working in
29 connection with the contracted services. Every such business entity shall also sign an affidavit
30 affirming that it does not knowingly employ any person who is an unauthorized alien in connection
31 with the contracted services. Any entity contracting with the state or any political subdivision of the
32 state shall only be required to provide the affidavits required in this subsection to the state and any
33 political subdivision of the state with which it contracts, on an annual basis. During or immediately
34 after an emergency, the requirements of this subsection that a business entity enroll and participate in
35 a federal work authorization program shall be suspended for fifteen working days. As used in this
36 subsection, "emergency" includes the following natural and manmade disasters: major snow and ice
37 storms, floods, tornadoes, severe weather, earthquakes, hazardous material incidents, nuclear power
38 plant accidents, other radiological hazards, and major mechanical failures of a public utility facility.

39 3.] Beginning October 1, 2015, all [public] employers, public or private, shall enroll and
40 actively participate in [a federal work authorization program] E-Verify.

41 [4.] 3. An employer [may enroll and participate in a federal work authorization program and]

1 shall verify the employment eligibility of every employee in the employer's hire whose employment
 2 commences after [the employer enrolls in a federal work authorization program] October 1, 2015.
 3 The employer shall retain a copy of the dated verification report received from the federal
 4 government while the employee is employed and for a period of one year thereafter. [Any business
 5 entity that participates] An employer enrolling and participating in [such program] E-Verify shall
 6 have an affirmative defense that such [business entity] employer has not violated subsection 1 of this
 7 section.

8 [5. A general contractor or subcontractor of any tier shall not be liable under sections 285.525
 9 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who
 10 violates subsection 1 of this section, if the contract binding the contractor and subcontractor
 11 affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this
 12 section and shall not henceforth be in such violation and the contractor or subcontractor receives a
 13 sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's
 14 employees are lawfully present in the United States.]

15 285.535. 1. (1) The attorney general shall enforce the requirements of sections 285.525 to
 16 285.550.

17 (2) The attorney general shall prescribe a complaint form to allege a violation of sections
 18 285.525 to 285.550.

19 2. An enforcement action shall be initiated by means of a written, signed complaint under
 20 penalty of perjury as defined in section 575.040 to the attorney general submitted by any state
 21 official, business entity, or state resident with a good faith belief that an employer is violating or has
 22 violated section 285.530, setting forth the basis for that belief. [A valid complaint shall include an
 23 allegation which describes the alleged violator as well as the actions constituting the violation, and
 24 the date and location where such actions occurred.] A complaint which alleges a violation solely or
 25 primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be
 26 enforced.

27 3. Upon receipt of a valid complaint, the attorney general shall, within fifteen business days,
 28 request [identity] information from the [business entity regarding any persons alleged to be
 29 unauthorized aliens] employer and may issue a subpoena for the production of employment records
 30 that relate to the recruitment, hiring, and employment practices of the employer, as well as dated
 31 employee E-Verify verification reports. Such request shall be made by certified mail. The attorney
 32 general shall direct the applicable municipal or county governing body to suspend any applicable
 33 license, permit, or exemptions of any business entity which fails, within fifteen business days after
 34 receipt of the request or subpoena, to provide such information or employment records.

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

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

41 (2) If the federal government notifies the attorney general that an employee is not authorized

1 to work in the United States, the attorney general shall proceed on the complaint as provided in
2 subsection 5 of this section;

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

8 5. (1) If the federal government notifies the attorney general that an employee is not
9 authorized to work in the United States, and the employer of the unauthorized alien participates in a
10 federal work authorization program, there shall be a rebuttable presumption that the employer has
11 met the requirements for an affirmative defense under subsection 4 of section 285.530, and the
12 employer shall comply with subsection 6 of this section.

13 (2) If the federal government notifies the attorney general that an employee is not authorized
14 to work in the United States, the attorney general shall bring a civil action in Cole County if the
15 attorney general reasonably believes the business entity knowingly violated subsection 1 of section
16 285.530:

17 (a) If the court finds that a business entity did not knowingly violate subsection 1 of section
18 285.530, the employer shall have fifteen business days to comply with subdivision (1) and paragraph
19 (a) of subdivision (2) of subsection 6 of this section. If the entity fails to do so, the court shall direct
20 the applicable municipal or county governing body to suspend the business permit, if such exists, and
21 any applicable licenses or exemptions of the entity until the entity complies with subsection 6 of this
22 section;

23 (b) If the court finds that a business entity knowingly violated subsection 1 of section
24 285.530, the court shall direct the applicable municipal or county governing body to suspend the
25 business permit, if such exists, and any applicable licenses or exemptions of such business entity for
26 fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply with
27 subsection 6 of this section at the end of the fourteen-day period.

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

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

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

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

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

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

7 7.] If, after an investigation, the attorney general determines that the complaint is not false
8 and frivolous, the attorney general shall bring a civil action in the circuit court of Cole County.

9 (1) The court shall hold a hearing to determine if a violation of sections 285.525 to 285.550
10 has occurred and, if appropriate, impose civil penalties in accordance with the provisions of this
11 section.

12 (2) If, during the course of the hearing required by subdivision (1) of this section, the court
13 concludes that there is a reasonable likelihood that an employee is an unauthorized alien, the attorney
14 general shall notify United States Immigration and Customs Enforcement and local law enforcement
15 agencies of the possible presence of an unauthorized alien.

16 5. For a first violation of sections 285.525 to 285.550, the court shall order:

17 (1) The employer to file a signed sworn affidavit with the attorney general within three
18 business days after the order is issued. The affidavit shall state with specificity that the employer has
19 enrolled in E-Verify and, if applicable, requested a verification of work authorization through
20 E-Verify for any employees hired after October 1, 2015, who were not previously verified through
21 E-Verify. If the employer fails to timely file an affidavit required by this subdivision, the attorney
22 general shall order the employer to pay, in addition to the civil penalty imposed under subdivision
23 (2) of this subsection, a civil penalty of one thousand dollars for each day that the affidavit is not
24 timely filed; and

25 (2) To pay a civil penalty of ten thousand dollars; or

26 (3) The suspension of all business licenses that are held by the employer for a minimum of
27 one day and a maximum of thirty days.

28 6. For a second violation of sections 285.525 to 285.550 that occurs after an order has been
29 issued under subsection 5 of this section, the court shall order the measures required under
30 subdivisions (1) and (2) or subdivision (3) of subsection 5 and also shall order:

31 (1) The employer to pay a civil penalty of ten thousand dollars if there are one or two
32 unverified employees and five thousand dollars for the third and each additional unverified
33 employee, not to exceed one hundred thousand dollars; or

34 (2) The suspension of all business licenses that are held by the employer for a minimum of
35 thirty days and a maximum of one year.

36 7. For a third violation of sections 285.525 to 285.550, the court shall order the permanent
37 suspension of all business licenses that are held by the employer as well as the revocation of the
38 employer's registration as a corporation, limited liability company, or limited partnership in the state
39 of Missouri, if applicable.

40 8. The suspension of a business license or licenses under [subsection 5] subsections 3, 5, 6,
41 or 7 of this section shall terminate one business day after a legal representative of the employer

1 submits the affidavit and other documentation required under [subsection 6 of] this section following
2 any period of restriction required under [subsection 5] subsections 3, 5, 6, or 7 of this section.

3 [8. For an entity that violates subsection 1 of section 285.530 for a second time, the court
4 shall direct the applicable municipal or county governing body to suspend, for one year, the business
5 permit, if such exists, and any applicable license or exemptions of the business entity. For a
6 subsequent violation, the court shall direct the applicable municipal or county governing body to
7 forever suspend the business permit, if such exists, and any applicable license or exemptions of the
8 business entity.]

9 9. In addition to the penalties in subsections [5 and 8] 3, 5, 6, and 7 of this section:

10 (1) Upon the first violation of [subsection 1 of] section 285.530 by any [business entity]
11 employer awarded a state contract or grant or receiving a state-administered tax credit, tax
12 abatement, or loan from the state, the [business entity] employer shall be deemed in breach of
13 contract and the state may terminate the contract and suspend or debar the [business entity] employer
14 from doing business with the state for a period of three years. Upon such termination, the state may
15 withhold up to twenty-five percent of the total amount due to the [business entity] employer;

16 (2) Upon a second or subsequent violation of [subsection 1 of] section 285.530 by any
17 [business entity] employer awarded a state contract or grant or receiving a state-administered tax
18 credit, tax abatement, or loan from the state, the [business entity] employer shall be deemed in
19 breach of contract and the state may terminate the contract and permanently suspend or debar the
20 [business entity] employer from doing business with the state. Upon such termination, the state may
21 withhold up to twenty-five percent of the total amount due to the [business entity] employer.

22 10. Sections 285.525 to 285.550 shall not be construed to deny any procedural mechanisms
23 or legal defenses included in [a federal work authorization program] E-Verify.

24 11. Any [business entity] employer subject to a complaint and subsequent enforcement under
25 sections 285.525 to 285.540, or any employee of such [a business entity] an employer, may
26 challenge the enforcement of this section with respect to such [entity] employer or employee in the
27 courts of the state of Missouri.

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

38 13. The determination of whether a worker is an unauthorized alien shall be made by the
39 federal government. A determination of such status of an individual by the federal government shall
40 create a rebuttable presumption as to that individual's status in any judicial proceedings brought
41 under this section or section 285.530. The court may take judicial notice of any verification of an

1 individual's status previously provided by the federal government and may request the federal
2 government to provide automated or testimonial verification.

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

6 15. [Any business entity which terminates an employee in accordance with this section shall
7 not be liable for any claims made against the business entity under chapter 213 for the termination]
8 Any costs incurred by an employer for participating in E-Verify may be deducted from the
9 employer's income or business taxes in this state.

10 285.543. The attorney general shall maintain a database that documents any [business entity]
11 employer whose permit, license, or exemption has been suspended or state contract has been
12 terminated.

13 285.550. If any municipal or county governing body fails to suspend the business permit, if
14 such exists, and applicable licenses or exemptions as directed by the attorney general as a result of a
15 violation of section 285.530 or 285.535 within fifteen days after notification by the attorney general,
16 the municipality or county shall be deemed to have adopted a sanctuary policy as defined in section
17 67.307 and shall be subject to the penalties thereunder.

18 285.555. Should the federal government discontinue or fail to authorize or implement [any
19 federal work authorization program] E-Verify, then subsections 2 and 3 of section 285.530 [and
20 paragraph (b) of subdivision (1) of subsection 6 of section 285.535 and paragraph (b) of subdivision
21 (2) of subsection 6 of section 285.535] shall not apply after the date of discontinuance or failure to
22 authorize or implement, and the general assembly shall review sections 285.525 to 285.555 for the
23 purpose of determining whether the sections are no longer applicable and should be repealed."; and
24

25 Further amend said bill by amending the title, enacting clause, and intersectional references
26 accordingly.