

FIRST REGULAR SESSION

HOUSE BILL NO. 235

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKINSON.

0951H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 285.525, 285.530, 285.535, 285.543, 285.550, and 285.555, RSMo, and to enact in lieu thereof six new sections relating to work authorizations.

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

Section A. Sections 285.525, 285.530, 285.535, 285.543, 285.550, and 285.555, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 285.525, 285.530, 285.535, 285.543, 285.550, and 285.555, to read as follows:

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

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

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

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.

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

19 [(4)] (3) "Employer", any person or **business** entity employing any person for hire within
20 the state of Missouri, including a public employer. Where there are two or more putative
21 employers, any person or entity taking a business tax deduction for the employee in question
22 shall be considered an employer of that person for purposes of sections 285.525 to 285.550;

23 [(5)] (4) "Employment", the act of employing or state of being employed, engaged, or
24 hired to perform work or service of any kind or character within the state of Missouri;

25 (5) **"E-Verify", the federal E-Verify program operated by the United States**
26 **Department of Homeland Security and other federal agencies or any successor or**
27 **equivalent program used to verify the work authorization of newly hired employees**
28 **pursuant to federal law;**

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

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

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

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

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

41 [(9)] (7) "Public employer", every department, agency, or instrumentality of the state or
42 political subdivision of the state;

43 [(10)] (8) "Unauthorized alien", an alien who does not have the legal right or
44 authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

45 [(11)] (9) "Work", any job, task, employment, labor, personal services, or any other
46 activity for which compensation is provided, expected, or due, including but not limited to all
47 activities conducted by business entities.

285.530. 1. No [business entity or] employer, **public or private**, shall [knowingly]
2 employ, hire for employment, or continue to employ an unauthorized alien to perform work
3 within the state of 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. Any entity contracting with the
12 state or any political subdivision of the state shall only be required to provide the affidavits
13 required in this subsection to the state and any political subdivision of the state with which it
14 contracts, on an annual basis. During or immediately after an emergency, the requirements of
15 this subsection that a business entity enroll and participate in a federal work authorization
16 program shall be suspended for fifteen working days. As used in this subsection, "emergency"
17 includes the following natural and manmade disasters: major snow and ice storms, floods,
18 tornadoes, severe weather, earthquakes, hazardous material incidents, nuclear power plant
19 accidents, other radiological hazards, and major mechanical failures of a public utility facility.

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

22 [4.] **3.** An employer [may enroll and participate in a federal work authorization program
23 and] shall verify the employment eligibility of every employee in the employer's hire whose
24 employment commences after [the employer enrolls in a federal work authorization program]
25 **October 1, 2015**. The employer shall retain a copy of the dated verification report received from
26 the federal government **while the employee is employed and for a period of one year**
27 **thereafter**. [Any business entity that participates] **An employer enrolling and participating**
28 in [such program] **E-Verify** shall have an affirmative defense that such [business entity]
29 **employer** has not violated subsection 1 of this section.

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

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

3 **(2)** The attorney general shall prescribe a complaint form to allege a violation of
4 **sections 285.525 to 285.550**.

5 2. An enforcement action shall be initiated by means of a written, signed complaint
6 under penalty of perjury as defined in section 575.040 to the attorney general submitted by any
7 state official, business entity, or state resident **with a good faith belief that an employer is**

8 **violating or has violated section 285.530, setting forth the basis for that belief.** [A valid
9 complaint shall include an allegation which describes the alleged violator as well as the actions
10 constituting the violation, and the date and location where such actions occurred.] A complaint
11 which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race
12 shall be deemed invalid and shall not be enforced.

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

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

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

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

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

37 5. (1) If the federal government notifies the attorney general that an employee is not
38 authorized to work in the United States, and the employer of the unauthorized alien participates
39 in a federal work authorization program, there shall be a rebuttable presumption that the
40 employer has met the requirements for an affirmative defense under subsection 4 of section
41 285.530, and the employer shall comply with subsection 6 of this section.

42 (2) If the federal government notifies the attorney general that an employee is not
43 authorized to work in the United States, the attorney general shall bring a civil action in Cole

44 County if the attorney general reasonably believes the business entity knowingly violated
45 subsection 1 of section 285.530:

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

52 (b) If the court finds that a business entity knowingly violated subsection 1 of section
53 285.530, the court shall direct the applicable municipal or county governing body to suspend the
54 business permit, if such exists, and any applicable licenses or exemptions of such business entity
55 for fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply
56 with subsection 6 of this section at the end of the fourteen-day period.

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

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

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

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

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

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

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

81 **(1) The court shall hold a hearing to determine if a violation of sections 285.525 to**
82 **285.550 has occurred and, if appropriate, impose civil penalties in accordance with the**
83 **provisions of this section.**

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

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

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

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

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

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

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

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

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

114 **8. The suspension of a business license or licenses under [subsection 5] subsections 3,**
115 **5, 6, or 7 of this section shall terminate one business day after a legal representative of the**
116 **employer submits the affidavit and other documentation required under [subsection 6 of] this**

117 section following any period of restriction required under [subsection 5] **subsections 3, 5, 6, or**
118 **7** of this section.

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

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

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

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

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

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

146 12. If the court finds that any complaint is frivolous in nature or finds no probable cause
147 to believe that there has been a violation, the court shall dismiss the case. For purposes of this
148 subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to
149 be valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory,
150 and punitive damages to the alleged violator for holding the alleged violator before the public
151 in a false light. If the court finds that a complaint is frivolous or that there is not probable cause
152 to believe there has been a violation, the attorney general shall issue a public report to the
153 complainant and the alleged violator stating with particularity its reasons for dismissal of the

154 complaint. Upon such issuance, the complaint and all materials relating to the complaint shall
155 be a public record as defined in chapter 610.

156 13. The determination of whether a worker is an unauthorized alien shall be made by the
157 federal government. A determination of such status of an individual by the federal government
158 shall create a rebuttable presumption as to that individual's status in any judicial proceedings
159 brought under this section or section 285.530. The court may take judicial notice of any
160 verification of an individual's status previously provided by the federal government and may
161 request the federal government to provide automated or testimonial verification.

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

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

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

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

285.555. Should the federal government discontinue or fail to authorize or implement
2 [any federal work authorization program] **E-Verify**, then subsections 2 and 3 of section 285.530
3 [and 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.

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