

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 390
95TH GENERAL ASSEMBLY

0766L.06T

2009

AN ACT

To repeal sections 208.009, 285.530, 285.555, and 292.675, RSMo, and to enact in lieu thereof five new section relating to unauthorized aliens, with an emergency clause.

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

Section A. Sections 208.009, 285.530, 285.555, and 292.675, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 173.1110, 208.009, 285.530, 285.555, and 292.675, to read as follows:

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.

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

2. As used in this section, "public benefit" means any grant, contract, or loan provided by an agency of state or local government; or any retirement, welfare, health, [postsecondary education, state grants and scholarships,] disability, housing, or food assistance benefit under which payments, assistance, credits, or reduced rates or fees are provided. The term "public benefit" shall not include **postsecondary education public benefits as defined in section 173.1110, RSMo, any municipal permit, or contracts or agreements between public utility providers and their customers** or unemployment benefits payable under chapter 288, RSMo. The unemployment compensation program shall verify the lawful presence of an alien for the purpose of determining eligibility for benefits in accordance with its own procedures.

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

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

5. An applicant who has provided the sworn affidavit required under subsection 4 of this section is eligible

to receive temporary public benefits as follows:

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

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

6. An applicant who is an alien shall not receive any state or local public benefit unless the alien's lawful presence in the United States is first verified by the federal government. State and local agencies administering public benefits in this state shall cooperate with the United States Department of Homeland Security in achieving verification of an alien's lawful presence in the United States in furtherance of this section. The system utilized may include the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security. **After an applicant's lawful presence in the United States has been verified through the Systematic Alien Verification for Entitlements Program, no additional verification is required within the same agency of the state or local government.**

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

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

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

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

4. An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section.

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

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

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

(1) "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;

(2) **"Contractor", any person entering into a contract with a public body for construction of public works which employs "on-site employees" for purposes of completion of the contract;**

(3) "Department", the department of labor and industrial relations;

(4) **"On-site employee", laborers, workmen, drivers, equipment operators, and craftsmen employed by contractors and subcontractors to be directly engaged in construction at the site of the public works. "Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the improvement constituting the public works. In addition, employees working at a nearby or adjacent facility used by the contractor or subcontractor for construction of the public works shall be deemed "on-site employees". Persons engaged solely in the transportation of materials, fuel, or equipment to the site of the public works shall not be deemed to be "directly engaged in construction;**

[(3)] (5) "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

[(4)] (6) "Public body", the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds;

[(5)] (7) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. "Public works" includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility;

(8) **"Subcontractor", any person entering into a subcontract with a contractor for construction of**

public works which employs "on-site employees" for purposes of completion of the contract.

2. Any [person signing a contract to work on the construction of public works] **contractor** for any public body **for purposes of construction of public works and any subcontractor to such contractor** shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, **unless such employees have previously completed the required program**. All employees **who have not previously completed the program** are required to complete the program within sixty days of beginning work on such construction project.

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

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

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

6. If the contractor or subcontractor fails to pay the penalty within forty-five days following notification by the department, the department shall pursue an enforcement action to enforce the monetary penalty provisions of subsection 4 of this section against the contractor or subcontractor found to be in violation of this section. If the court orders payment of the penalties as prescribed under subsection 4 of this section, the department shall be entitled to recover its actual cost of enforcement in addition to such penalty amount.

7. The department may establish rules and regulations for the purpose of implementing the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under

the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

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

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

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

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

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