

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Substitute for Senate Bill No. 666, Page 1, Section 285.075, Line 10, by inserting
2 after all of said section and line the following:

3
4 "285.530. 1. No business entity or employer, public or private, shall knowingly employ,
5 hire for employment, or continue to employ an unauthorized alien to perform work within the state
6 of Missouri. A business entity or employer that substantially complies with this section shall have a
7 complete defense to a claim for injury or damages arising out of an employment relationship based
8 upon an employee's status as an unauthorized alien.

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

25 ~~———3.] All [public] employers, public or private, and business entities shall enroll and actively~~
26 ~~participate in a federal work authorization program.~~

27 ~~[4:] 3. An employer [may enroll and participate in a federal work authorization program~~
28 ~~and] or business entity shall verify the employment eligibility of every employee in the employer's~~
29 ~~or business entity's hire whose employment commences after the employer or business entity enrolls~~
30 ~~in a federal work authorization program. The employer or business entity shall retain a copy of the~~
31 ~~dated verification report received from the federal government. [Any] A business entity [that~~
32 ~~participates] enrolling and participating in such program shall have an affirmative defense that such~~
33 ~~business entity has not violated subsection 1 of this section.~~

34 ~~[5:] 4. A general contractor or subcontractor of any tier shall not be liable under sections~~
35 ~~285.525 to 285.550 when such general contractor or subcontractor contracts with its direct~~
36 ~~subcontractor who violates subsection 1 of this section, if the contract binding the contractor and~~

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1 subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of
 2 subsection 1 of this section and shall not henceforth be in such violation and the contractor or
 3 subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the
 4 direct subcontractor's employees are lawfully present in the United States.

5 285.535. 1. The attorney general shall enforce the requirements of sections 285.525 to
 6 285.550.

7 2. An enforcement action shall be initiated by means of a written, signed complaint under
 8 penalty of perjury as defined in section 575.040 to the attorney general submitted by any state
 9 official, business entity, or state resident. A valid complaint shall include an allegation which
 10 describes the alleged violator as well as the actions constituting the violation, and the date and
 11 location where such actions occurred. A complaint which alleges a violation solely or primarily on
 12 the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

13 3. Upon receipt of a valid complaint, the attorney general shall, within fifteen business days,
 14 request identity information from the business entity regarding any persons alleged to be
 15 unauthorized aliens. Such request shall be made by certified mail. The attorney general shall direct
 16 the applicable municipal or county governing body to suspend any applicable license, permit, or
 17 exemptions of any business entity which fails, within fifteen business days after receipt of the
 18 request, to provide such information.

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

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

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

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

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

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

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

48 ~~——(b) If the court finds that a business entity knowingly violated subsection 1 of section~~

1 285.530, the court shall direct the applicable municipal or county governing body to suspend the
 2 business permit, if such exists, and any applicable licenses or exemptions of such business entity for
 3 fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply with
 4 subsection 6 of this section at the end of the fourteen-day period].

5 (1) Upon a finding of a first violation of section 285.530 by a business entity, the court shall
 6 order the suspension of all licenses that are held by the business entity for a minimum of one day
 7 and a maximum of thirty days.

8 (2) Upon a finding of a second violation of section 285.530 by a business entity, the court
 9 shall order the suspension of all licenses that are held by the business entity for a minimum of thirty
 10 days and a maximum of one year.

11 (3) Upon a finding of a third violation of section 285.530 by a business entity, the court
 12 shall order the permanent suspension of all licenses that are held by the business entity as well as the
 13 revocation of the business entity's registration as a corporation, limited liability company, or limited
 14 partnership in the state of Missouri, if applicable.

15 6. ~~[The correction of a violation with respect to the employment of an unauthorized alien~~
 16 ~~shall include the following actions:~~

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

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

27 ~~—— (2) A legal representative of the business entity submits, at an office designated by the~~
 28 ~~attorney general, the following:~~

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

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

35 ~~—— 7. The suspension of a business license or licenses under subsection 5 of this section shall~~
 36 ~~terminate one business day after a legal representative of the business entity submits the affidavit~~
 37 ~~and other documentation required under subsection 6 of this section following any period of~~
 38 ~~restriction required under subsection 5 of this section.~~

39 ~~—— 8. For an entity that violates subsection 1 of section 285.530 for a second time, the court~~
 40 ~~shall direct the applicable municipal or county governing body to suspend, for one year, the business~~
 41 ~~permit, if such exists, and any applicable license or exemptions of the business entity. For a~~
 42 ~~subsequent violation, the court shall direct the applicable municipal or county governing body to~~
 43 ~~forever suspend the business permit, if such exists, and any applicable license or exemptions of the~~
 44 ~~business entity.~~

45 ~~—— 9.] In addition to the penalties in [subsections] subsection 5 [and 8] of this section:~~

46 ~~(1) Upon the first violation of subsection 1 of section 285.530 by any business entity~~
 47 ~~awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan~~
 48 ~~from the state, the business entity shall be deemed in breach of contract and the state may terminate~~

1 the contract and suspend or debar the business entity from doing business with the state for a period
2 of three years. Upon such termination, the state may withhold up to twenty-five percent of the total
3 amount due to the business entity;

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

10 ~~[10-]~~ 7. Sections 285.525 to 285.550 shall not be construed to deny any procedural
11 mechanisms or legal defenses included in a federal work authorization program.

12 ~~[11-]~~ 8. Any business entity subject to a complaint and subsequent enforcement under
13 sections 285.525 to 285.540, or any employee of such a business entity, may challenge the
14 enforcement of this section with respect to such entity or employee in the courts of the state of
15 Missouri.

16 ~~[12-]~~ 9. If the court finds that any complaint is frivolous in nature or finds no probable
17 cause to believe that there has been a violation, the court shall dismiss the case. For purposes of this
18 subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to be
19 valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory, and
20 punitive damages to the alleged violator for holding the alleged violator before the public in a false
21 light. If the court finds that a complaint is frivolous or that there is not probable cause to believe
22 there has been a violation, the attorney general shall issue a public report to the complainant and the
23 alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such
24 issuance, the complaint and all materials relating to the complaint shall be a public record as defined
25 in chapter 610.

26 ~~[13-]~~ 10. The determination of whether a worker is an unauthorized alien shall be made by
27 the federal government. A determination of such status of an individual by the federal government
28 shall create a rebuttable presumption as to that individual's status in any judicial proceedings
29 brought under this section or section 285.530. The court may take judicial notice of any verification
30 of an individual's status previously provided by the federal government and may request the federal
31 government to provide automated or testimonial verification.

32 ~~[14-]~~ 11. Compensation, whether in money or in kind or in services, ~~[knowingly]~~ provided
33 to any unauthorized alien shall not be allowed as a business expense deduction from any income or
34 business taxes of this state.

35 ~~[15-]~~ 12. Any business entity which terminates an employee in accordance with this section
36 shall not be liable for any claims made against the business entity under chapter 213 for the
37 termination.

38 13. Any costs incurred by the business entity for participating in a federal work
39 authorization program may be deducted from the business entity's income or business taxes in this
40 state.

41 285.555. Should the federal government discontinue or fail to authorize or implement any
42 federal work authorization program, then subsections 2 and 3 of section 285.530 ~~[and paragraph (b)~~
43 ~~of subdivision (1) of subsection 6 of section 285.535 and paragraph (b) of subdivision (2) of~~
44 ~~subsection 6 of section 285.535]~~ shall not apply after the date of discontinuance or failure to
45 authorize or implement, and the general assembly shall review sections 285.525 to 285.555 for the
46 purpose of determining whether the sections are no longer applicable and should be repealed."; and
47
48

1 Further amend said bill, Page 17, Section 285.750, Line 30, by inserting after all of said section and
2 line the following:

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4 "Section B. The repeal and reenactment of sections 285.530, 285.535, and 285.555 of this
5 act shall become effective January 1, 2019."; and

6

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