

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1549, 1771, 1395 & 2366
94TH GENERAL ASSEMBLY

3681L.12T

2008

AN ACT

To repeal sections 8.283, 302.720, and 544.470, RSMo, and to enact in lieu thereof twenty-four new sections relating to illegal aliens, with penalty provisions, and an effective date for certain sections.

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

Section A. Sections 8.283, 302.720, and 544.470, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 43.032, 67.307, 208.009, 285.309, 285.500, 285.503, 285.506, 285.512, 285.515, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, 292.675, 302.063, 302.720, 544.470, 577.722, 577.900, 578.570, and 650.681, to read as follows:

43.032. Subject to appropriation, the superintendent of the Missouri state highway patrol shall designate that some or all members of the highway patrol be trained in accordance with a memorandum of understanding between the state of Missouri and the United States Department of Homeland Security concerning the enforcement of federal immigration laws during the course of their normal duties in the state of Missouri, in accordance with 8 U.S.C. Section 1357(g). The superintendent shall have the authority to negotiate the terms of such memorandum. The memorandum shall be signed by the superintendent of the highway patrol, the governor, and the director of the department of public safety.

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

- (1) "Law enforcement officer", a sheriff or peace officer of a municipality with the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of municipalities;**
- (2) "Municipality", any county, city, town, or village;**
- (3) "Municipality official", any elected or appointed official or any law enforcement officer serving the municipality;**
- (4) "Sanctuary policy", any municipality's order or ordinance, enacted or followed that:
 - (a) Limits or prohibits any municipality official or person employed by the municipality from communicating or cooperating with federal agencies or officials to verify or report the immigration status of****

any alien within such municipality; or

(b) Grants to illegal aliens the right to lawful presence or status within the municipality in violation of federal law.

2. No municipality shall enact or adopt any sanctuary policy. Any municipality that enacts or adopts a sanctuary policy shall be ineligible for any moneys provided through grants administered by any state agency or department until the sanctuary policy is repealed or is no longer in effect. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the government entity, agency, or political subdivision has current policies in contravention of this section.

3. The governing body, sheriff, or chief of police of each municipality shall provide each law enforcement officer with written notice of their duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration.

4. This section shall become effective on January 1, 2009.

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 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.

7. The provisions of this section shall not be construed to require any nonprofit organization organized under the Internal Revenue Code 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.

285.309. 1. Every employer doing business in this state who employs five or more employees shall, if applicable, submit federal 1099 miscellaneous forms to the department of revenue. Such forms shall be submitted to the department of revenue within the time lines established for the filing of Missouri form 99 forms.

2. Any employer who intentionally, on five or more occasions, fails to submit information required under subsection 1 of this section shall be fined not more than two hundred dollars for each time the employer fails to submit the information on or after the fifth occurrence.

285.500. For the purposes of sections 285.500 to 285.515 the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.;

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works

as defined in section 290.210, RSMo;

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

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

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

285.503. 1. An employer knowingly misclassifies a worker if that employer fails to claim the worker as an employee but knows that the worker is an employee.

2. The attorney general may investigate alleged or suspected violations of sections 285.500 to 285.515 and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with any investigation of an alleged or suspected violation of sections 285.500 to 285.515 as if the acts enumerated in sections 285.500 to 285.515 are unlawful acts proscribed by chapter 407, RSMo. The attorney general may serve and enforce subpoenas related to the enforcement of sections 285.500 to 285.515.

285.506. In any action brought under sections 285.500 to 285.515, the state shall have the burden of proving that the employer misclassified the worker.

285.512. Whenever the attorney general has reason to believe that an employer is engaging in any conduct that would be a violation of sections 285.500 to 285.515, the attorney general may seek an injunction prohibiting the employer from engaging in such conduct. The attorney general may bring an action for injunctive relief in the circuit court of any county where the alleged violation is occurring or about to occur.

285.515. If a court determines that an employer has knowingly misclassified a worker, the court shall enter a judgment in favor of the state and award penalties in the amount of fifty dollars per day per misclassified worker up to a maximum of fifty thousand dollars. The attorney general may enter into a consent judgment with any person alleged to have violated sections 285.500 to 285.515.

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, RSMo;

(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;

(3) "Employee", any person performing work or service of any kind or character for hire within the

state of Missouri;

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

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

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

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

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

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

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

(9) "Public employer", every department, agency, or instrumentality of the state or political subdivision of the state;

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

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

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.

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.

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

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

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

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

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

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

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

5. (1) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, and the employer of the unauthorized alien participates in a federal work authorization program, there shall be a rebuttable presumption that the employer has met the requirements

for an affirmative defense under subsection 4 of section 285.530, and the employer shall comply with subsection 6 of this section.

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

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

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

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

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

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

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

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

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

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

8. For an entity that violates subsection 1 of section 285.530 for a second time, the court shall direct

the applicable municipal or county governing body to suspend, for one year, the business permit, if such exists, and any applicable license or exemptions of the business entity. For a subsequent violation, the court shall direct the applicable municipal or county governing body to forever suspend the business permit, if such exists, and any applicable license or exemptions of the business entity.

9. In addition to the penalties in subsections 5 and 8 of this section:

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

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

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

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

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

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

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

15. Any business entity which terminates an employee in accordance with this section shall not be

liable for any claims made against the business entity under chapter 213, RSMo, for the termination.

285.540. The attorney general shall promulgate rules to implement the provisions of sections 285.525 to 285.550. 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 under 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.

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

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

285.555. Should the federal government discontinue or fail to authorize or implement any federal work authorization program, 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) "Department", the department of labor and industrial relations;

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

(4) "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) "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.

2. Any person signing a contract to work on the construction of public works for any public body 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. All employees are required to complete the program within sixty days of beginning work on such construction project.

3. Any employee found on a worksite 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. 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.

302.063. The department of revenue shall not issue any driver's license to an illegal alien nor to any person who cannot prove his or her lawful presence pursuant to the provisions of this chapter and the regulations promulgated thereunder. A driver's license issued to an illegal alien in another state shall not be honored by the state of Missouri and the department of revenue for any purpose. The state of Missouri hereby declares that granting driver's licenses to illegal aliens is repugnant to the public policy of Missouri and therefore Missouri shall not extend full faith and credit to out-of-state driver's licenses issued to illegal aliens. As used in this section, the term "illegal alien" shall mean an alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq.

302.720. 1. Except when operating under an instruction permit as described in this section, no person may drive a commercial motor vehicle unless the person has been issued a commercial driver's license with applicable endorsements valid for the type of vehicle being operated as specified in sections 302.700 to 302.780. A commercial driver's instruction permit shall allow the holder of a valid license to operate a commercial motor vehicle when accompanied by the holder of a commercial driver's license valid for the vehicle being operated and who occupies a seat beside the individual, or reasonably near the individual in the case of buses, for the purpose of giving instruction in driving the commercial motor vehicle. A commercial driver's instruction permit shall be valid for the vehicle being operated for a period of not more than six months, and shall not be issued until the permit holder has met all other requirements of sections 302.700 to 302.780, except for the driving test. A permit holder, unless otherwise disqualified, may be granted one six-month renewal within a one-year period. The fee for such permit or renewal shall be five dollars. In the alternative, a commercial driver's instruction permit shall be issued for a thirty-day period to allow the holder of a valid driver's license to operate a commercial motor vehicle if the applicant has completed all other requirements except the driving test. The permit may be renewed for one additional thirty-day period and the fee for the permit and for renewal shall be five dollars.

2. No person may be issued a commercial driver's license until he has passed written and driving tests for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the Secretary and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570), as well as any other requirements imposed by state law. Applicants for a hazardous materials endorsement must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Nothing contained in this subsection shall be construed as prohibiting the director from establishing alternate testing formats for those who are functionally illiterate; provided, however, that any such alternate test must comply with the minimum requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570) as established by the Secretary.

(1) The written and driving tests shall be held at such times and in such places as the superintendent may designate. A twenty-five dollar examination fee shall be paid by the applicant upon completion of any written or

driving test. The director shall delegate the power to conduct the examinations required under sections 302.700 to 302.780 to any member of the highway patrol or any person employed by the highway patrol qualified to give driving examinations. **The written test shall only be administered in the English language. No translators shall be allowed for applicants taking the test.**

(2) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department of revenue. Such rules and regulations shall substantially comply with the requirements of 49 CFR Part 383, Section 383.75. A certification to conduct third-party testing shall be valid for one year, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester.

(3) Beginning August 28, 2006, the director shall only issue or renew third-party tester certification to junior colleges or community colleges established under chapter 178, RSMo, or to private companies who own, lease, or maintain their own fleet and administer in-house testing to their employees, or to school districts and their agents that administer in-house testing to the school district's or agent's employees. Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his certification revoked by the department. The department shall provide written notice and an opportunity for the third-party tester to be heard in substantially the same manner as provided in chapter 536, RSMo. If any applicant submits evidence that he has successfully completed a test administered by a third-party tester, the actual driving test for a commercial driver's license may then be waived.

(4) Every applicant for renewal of a commercial driver's license shall provide such certifications and information as required by the secretary and if such person transports a hazardous material must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Such person shall be required to take the written test for such endorsement. A twenty-five dollar examination fee shall be paid upon completion of such tests.

(5) The director shall have the authority to waive the driving skills test for any qualified military applicant for a commercial driver's license who is currently licensed at the time of application for a commercial driver's license. The director shall impose conditions and limitations to restrict the applicants from whom the department may accept alternative requirements for the skills test described in federal regulation 49 C.F.R. 383.77. An applicant must certify that, during the two-year period immediately preceding application for a commercial driver's license, all of the following apply:

(a) The applicant has not had more than one license;

(b) The applicant has not had any license suspended, revoked, or cancelled;

(c) The applicant has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in this chapter or federal rule 49 C.F.R. 383.51(b);

(d) The applicant has not had more than one conviction for any type of motor vehicle for serious traffic violations;

(e) The applicant has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, but not including any parking violation, arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault;

(f) The applicant is regularly employed in a job requiring operation of a commercial motor vehicle and has operated the vehicle for at least sixty days during the two years immediately preceding application for a

commercial driver's license. The vehicle must be representative of the commercial motor vehicle the driver applicant operates or expects to operate;

(g) The applicant, if on active duty, must provide a notarized affidavit signed by a commanding officer as proof of driving experience as indicated in paragraph (f) of this subdivision;

(h) The applicant, if honorably discharged from military service, must provide a form-DD214 or other proof of military occupational specialty;

(i) The applicant must meet all federal and state qualifications to operate a commercial vehicle; and

(j) The applicant will be required to complete all applicable knowledge tests.

3. A commercial driver's license may not be issued to a person while the person is disqualified from driving a commercial motor vehicle, when a disqualification is pending in any state or while the person's driver's license is suspended, revoked, or canceled in any state; nor may a commercial driver's license be issued unless the person first surrenders in a manner prescribed by the director any commercial driver's license issued by another state, which license shall be returned to the issuing state for cancellation.

4. Beginning July 1, 2005, the director shall not issue an instruction permit under this section unless the director verifies that the applicant is lawfully present in the United States before accepting the application. The director may, by rule or regulation, establish procedures to verify the lawful presence of the applicant under this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

544.470. 1. If the offense is not bailable, or if the person does not meet the conditions for release, as provided in section 544.455, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

2. There shall be a presumption that releasing the person under any conditions as provided by section 544.455 shall not reasonably assure the appearance of the person as required if the circuit judge or associate circuit judge reasonably believes that the person is an alien unlawfully present in the United States. If such presumption exists, the person shall be committed to the jail, as provided in subsection 1 of this section, until such person provides verification of his or her lawful presence in the United States to rebut such presumption. If the person adequately proves his or her lawful presence, the circuit judge or associate circuit judge shall review the issue of release, as provided under section 544.455, without regard to previous issues concerning whether the person is lawfully present in the United States. If the person cannot prove his or her lawful presence, the person shall continue to be committed to the jail and remain until discharged by due course of law.

577.722. 1. It shall be unlawful for any person to knowingly transport, move, or attempt to transport in the state of Missouri any illegal alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq., for the purposes of trafficking in violation of sections 566.200 to 566.215, RSMo, drug trafficking in violation of sections 195.222 to 195.223, RSMo, prostitution in violation of chapter 567, RSMo, or employment.

2. Any person violating the provisions of subsection 1 of this section shall be guilty of a felony for which the authorized term of imprisonment is a term of years not less than one year, or by a fine in an amount not less than one thousand dollars, or by both such fine and imprisonment.

3. Nothing in this section shall be construed to deny any victim of an offense under sections 566.200 to 566.215, RSMo, of rights afforded by the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.

577.900. 1. If verification of the nationality or lawful immigration status of any person who is charged and confined to jail for any period of time cannot be made from documents in the possession of the prisoner or after a reasonable effort on the part of the arresting agency to determine the nationality or immigration status of the person so confined, verification shall be made by the arresting agency within forty-eight hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the prisoner is in the United States unlawfully, the arresting agency shall notify the United States Department of Homeland Security. Until August 28, 2009, this section shall only apply to officers employed by the department of public safety to include: the highway patrol, water patrol, capitol police, fire marshal's office, and division of alcohol and tobacco control.

2. Nothing in this section shall be construed to deny any person bond or prevent a person from being released from confinement if such person is otherwise eligible for release.

578.570. Any person who:

(1) Knowing or in reckless disregard of the truth, assists any person in committing fraud or deception during the examination process for an instruction permit, driver's license, or nondriver's license;

(2) Knowing or in reckless disregard of the truth, assists any person in making application for an instruction permit, driver's license, or nondriver's license that contains or is substantiated with false or fraudulent information or documentation;

(3) Knowing or in reckless disregard of the truth, assists any person in concealing a material fact or otherwise committing a fraud in an application for an instruction permit, driver's license, or nondriver's license; or

(4) Engages in any conspiracy to commit any of the preceding acts or aids or abets the commission of any of the preceding acts;

is guilty of a class A misdemeanor.

650.681. 1. Notwithstanding any other provision of law, no government entity, political subdivision, or government official within the state of Missouri shall prohibit, or in any way restrict, any government entity or official from communicating or cooperating with the United States Bureau of Immigration and Customs Enforcement regarding the citizenship or immigration status, lawful or unlawful, of any individual.

2. Municipalities and political subdivisions may collect and share the identity of persons by the same means the Federal Bureau of Investigation or its successor agency uses in its Integrated Automated Fingerprint Identification System or its successor program.

3. Notwithstanding any other provision of law, no person or agency within the state of Missouri shall prohibit, or in any way restrict, a public employee from doing any of the following with respect to

information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the United States Bureau of Immigration and Customs Enforcement;

(2) Maintaining such information; or

(3) Exchanging such information with any other federal, state, or local government entity.

4. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the government entity, agency, or political subdivision has current policies in contravention of subsections 1 and 3 of this section.

5. No state agency or department shall provide any funding or award any monetary grants to any government entity, agency, or political subdivision determined under subsection 4 of this section to have a policy in contravention of subsections 1 and 3 of this section until the policy is repealed or no longer in effect.

6. The provisions of subsections 1 and 3 of this section shall not apply to any state or local agency administering one or more federal public benefit programs as such term is defined in 8 U.S.C. Section 1612.

[8.283. 1. If a state agency for whom work is being performed by a contractor determines upon reasonable evidence that the contractor or a subcontractor engaged to complete work required by the contract hired one or more aliens who are unauthorized to work in the United States, the state agency shall order the contractor to cause the discharge of such unauthorized workers. 2. If upon reasonable evidence the state agency determines that a contractor or subcontractor has knowingly violated the Immigration Reform and Control Act of 1986, or its successor statute, in employing aliens unauthorized to work in the United States, the agency may cause up to twenty percent of the total amount of the contract or subcontract performed by the employer of such unauthorized workers to be withheld from payment to the employer in violation of such statute.

3. If a contractor is determined by a state agency upon reasonable evidence to have engaged a subcontractor to complete work required by the contract with knowledge that the subcontractor violated or intended to violate the Immigration Reform and Control Act of 1986, or its successor statute, in hiring or continuing to employ aliens unauthorized to work in the United States, the state agency may withhold from the contractor up to double the amount caused to be withheld from payments to the subcontractor.

4. Any contractor or subcontractor from whom payment is withheld under subsection 2 or 3 of this section shall be ineligible to perform other contracts or subcontracts for the state of Missouri for a period of two years from the date of such action.

5. No state agency or contractor taking any action authorized by this section shall be subject to any claim arising from such action and shall be deemed in compliance with the laws of this state regarding timely payment.

6. The provisions of this section shall only be effective to the extent that such provisions are not preempted or prohibited by Section 1324(a) of Title 8 of the United States Code, as now or hereafter amended, and any regulations promulgated thereunder, relating to the employment of unauthorized aliens.]

Section B. The provisions of sections 67.307, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, and 650.681 of section A of this act shall become effective on January 1, 2009.

Section C. The enactment of section 292.675 of section A of this act shall become effective on August 28,

2009.

•