

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
**SENATE BILLS NOS. 348,
626 & 461**

94TH GENERAL ASSEMBLY

Reported from the Committee on Pensions, Veterans' Affairs and General Laws, April 12, 2007, with recommendation that the Senate Committee Substitute do pass.

1660S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 172.360, 174.130, 178.635, and 178.780, RSMo, and to enact in lieu thereof sixteen new sections relating to the Missouri omnibus immigration act, with penalty provisions.

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

Section A. Sections 172.360, 174.130, 178.635, and 178.780, RSMo, are
2 repealed and sixteen new sections enacted in lieu thereof, to be known as sections
3 28.800, 28.803, 28.806, 28.809, 28.812, 28.824, 28.833, 79.980, 143.992, 172.360,
4 174.130, 175.025, 178.635, 178.780, 178.786, and 208.009, to read as follows:

**28.800. Sections 28.800 to 28.833, section 79.980, RSMo, section
2 143.992, RSMo, section 172.360, RSMo, section 174.130, RSMo, section
3 175.025, RSMo, sections 178.635, 178.780, 178.786, RSMo, section 208.009,
4 RSMo, section 285.025, RSMo, and section 290.560, RSMo, shall be
5 known and may be cited as the "Missouri Omnibus Immigration
6 Act". All officials, agencies, and personnel covered by the provisions of
7 this act shall fully comply with, and, to the full extent permitted by law,
8 support the enforcement of federal law prohibiting the entry into and
9 presence in the United States of aliens in violation of federal
10 immigration law.**

**28.803. The purpose of the Missouri Omnibus Immigration Act is
2 to assist the federal government in enforcing federal immigration law
3 to its full extent. Sections 28.800 to 28.833, section 79.980, RSMo,
4 section 143.992, RSMo, section 172.360, RSMo, section 174.130, RSMo,**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 section 175.025, RSMo, sections 178.635, 178.780, 178.786, RSMo, section
6 208.009, RSMo, section 285.025, RSMo, and section 290.560, RSMo,
7 enhance state law in order to allow the enforcement of federal law. In
8 no way should this legislation be viewed as Missouri's attempt to
9 occupy the immigration field which should be occupied solely by the
10 federal government. Rather, sections 28.800 to 28.833, section 79.980,
11 RSMo, section 143.992, RSMo, section 172.360, RSMo, section 174.130,
12 RSMo, section 175.025, RSMo, sections 178.635, 178.780, 178.786, RSMo,
13 section 208.009, RSMo, section 285.025, RSMo, and section 290.560,
14 RSMo, use the inherent powers of the state of Missouri in its own areas
15 of law that indirectly affect immigration. In this way the Missouri
16 Omnibus Immigration Act is fully constitutional.

28.806. 1. The general assembly of the state of Missouri finds
2 that employers in this state who use illegal laborers have
3 systematically distorted the labor market of this state by reducing
4 wages, adversely affecting working conditions, evading taxes, and
5 reducing the number of jobs available to those who are lawfully
6 entitled to employment in Missouri. Employment of illegal laborers
7 should be viewed as any other illegal business practice, that is, a means
8 to exploit others and to gain an advantage over law-abiding
9 competitors.

10 2. The general assembly of the state of Missouri further finds
11 that the United States, through the U.S. Department of Homeland
12 Security, has established and maintains a national program for the
13 electronic verification of work authorization, the basic pilot program,
14 which enables employers to promptly and accurately verify the
15 employment eligibility of all job applicants.

16 3. State and federal law require that certain conditions be met
17 before a person may be authorized to work or reside in the United
18 States.

19 4. Unlawful workers and illegal aliens, as defined by sections
20 28.800 to 28.833 and state and federal law, do not meet such conditions
21 as a matter of law when present in the state of Missouri.

22 5. Unlawful employment and crime committed by illegal aliens
23 harm the health, safety and welfare of authorized U.S. workers and
24 legal residents in the state of Missouri.

25 6. The federal government has neglected to properly protect the

26 citizens of the state of Missouri from the adverse effects of
27 unauthorized employment and the activities of criminal aliens.

28 7. The state of Missouri finds that it is in the best interests of the
29 state and that it will benefit the health, safety and welfare of the public
30 to adopt policies and procedures to deter and prevent unauthorized
31 employment and criminal activity by illegal aliens.

 28.809. As used in sections 28.800 to 28.833, the following terms
2 shall have the following meanings:

3 (1) "Basic pilot program", the electronic verification of work
4 authorization program of the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section
6 403(a); 8 U.S.C. 1324a, and operated by the United States Department
7 of Homeland Security or its successor program;

8 (2) "Employee", any person performing or applying for work or
9 service of any kind or character for hire;

10 (3) "Employer", a person who pays for the services of an
11 individual employee or independent contractor. This term shall not
12 include a person who pays for the services of a general or sub-
13 contractor. Where there are two or more putative employers, any
14 person or entity taking a business tax deduction for the employee in
15 question shall be considered an employer of that person for purposes
16 of sections 28.800 to 28.833;

17 (4) "Employment", the act of employing or state of being
18 employed, engaged, or hired;

19 (5) "Illegal alien", an alien who is not lawfully present in the
20 United States, according to the terms of 8 U.S.C. 1101, et seq. The state
21 of Missouri shall not conclude that a person is an illegal alien unless
22 and until an authorized representative of the state of Missouri has
23 verified with the federal government, under 8 U.S.C. 1373(c), that the
24 person is an alien who is not lawfully present in the United States;

25 (6) "Law enforcement", any peace officer as defined in section
26 590.010, RSMo;

27 (7) "Law enforcement agency", any agency employing law
28 enforcement officers;

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

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

28.812. 1. It shall be unlawful for any employer to employ,
2 **recruit, hire for employment, or continue to employ an unauthorized**
3 **alien to perform work within the state of Missouri.**

4 **2. As provided in section 143.992, RSMo, all employers shall**
5 **submit an affidavit to the department of revenue accompanying each**
6 **remittance of withholding taxes, or in the case of an employer which**
7 **does not withhold employee taxes, such employer shall submit such**
8 **affidavit with the annual income tax return required under chapter**
9 **143, RSMo, affirming that such employer is enrolled in and actively**
10 **participating in the basic pilot program.**

11 **3. All employers shall be in compliance with this section by**
12 **submitting the information required in subsection 2 of this section by**
13 **the following deadlines:**

14 **(1) January 1, 2008, for all state employers, state political**
15 **subdivision employers, and local government employers;**

16 **(2) January 1, 2009, for any employer as a condition for the**
17 **award of any state contract or grant to an employer for which the value**
18 **of employment, labor, or personal services shall exceed ten thousand**
19 **dollars;**

20 **(3) January 1, 2009, for any employer cumulatively employing**
21 **thirty or more employees including independent contractors, within the**
22 **previous calendar year;**

23 **(4) January 1, 2010, and every year thereafter, for any employer**
24 **cumulatively employing ten or more employees including independent**
25 **contractors, within the previous calendar year.**

26 **4. An employer participating in the basic pilot program shall**
27 **verify the employment eligibility of every employee, including every**
28 **independent contractor, in the employer's hire whose employment**
29 **commences after the employer enrolls in the basic pilot program. The**
30 **employer shall retain all documentation received in connection with**
31 **the participation in the basic pilot program that verifies the**
32 **employment eligibility of every employee and independent contractor**
33 **for at least three years after the termination of the employment of the**

34 **employee or the independent contractor. This documentation shall be**
35 **provided to the department of revenue upon request.**

28.824. 1. All law enforcement agencies shall inquire into the
2 citizenship and immigration status of any person arrested and detained
3 in a jail facility for a violation of any state law, regardless of the
4 person's national origin, ethnicity, or race. In all such cases where a
5 person indicates that he or she is not a citizen or national of the United
6 States, the law enforcement agent shall verify with the federal
7 government whether the alien is lawfully or unlawfully present in the
8 United States, under 8 U.S.C. 1373(c). If the alien is verified to be
9 unlawfully present in the United States, the law enforcement officer
10 shall cooperate with any request by federal immigration authorities to
11 detain the alien or transfer the alien for up to seven days to the
12 custody of the federal government.

13 2. Under 8 U.S.C. 1373 and 1644, no official, personnel or agent
14 of a city, county, or state law enforcement agency may be prohibited or
15 in any way restricted from sending, receiving, or maintaining,
16 information regarding the immigration status, lawful or unlawful, of
17 any individual, or exchanging such information with any other federal,
18 state or local government entity. No city, county, or state law
19 enforcement agency may by ordinance, official policy, or informal
20 policy, prevent its officers from asking individuals their citizenship or
21 immigration status.

22 3. The state of Missouri, through the department of public safety,
23 shall as quickly as practicable enter into a cooperative agreement with
24 the United States Department of Homeland Security, under 8 U.S.C.
25 1357(g), to designate specific state law enforcement officers as officers
26 qualified to exercise the enforcement powers of federal immigration
27 officers in the United States. The state may negotiate the cooperative
28 agreement or participate in its implementation in partnership with
29 other state or local law enforcement agencies.

28.833. If any provision of sections 28.800 to 28.833, section
2 79.980, RSMo, section 172.360, RSMo, section 174.130, RSMo, section
3 175.025, RSMo, sections 178.635, 178.780, 178.786, RSMo, section 208.009,
4 RSMo, section 285.025, RSMo, and section 290.560, RSMo, or the
5 application of any such provision to any person or circumstance is held
6 invalid, the invalidity shall not affect other provisions or applications

7 of sections 28.800 to 28.236, section 79.980, RSMo, section 172.360, RSMo,
8 section 174.130, RSMo, section 175.025, RSMo, sections 178.635, 178.780,
9 178.786, RSMo, section 208.009, RSMo, section 285.025, RSMo, and
10 section 290.560, RSMo, which can be given effect without the invalid
11 provision or application, and to this end the provisions of this code are
12 declared to be severable.

79.980. Any city, village, or town may enact any ordinance
2 restricting the rental of housing to an alien unlawfully present in the
3 United States and imposing fines of any amount upon violators of such
4 an ordinance. Any city, village, or town may enact any ordinance
5 prohibiting the employment of unauthorized aliens or other unlawful
6 workers, may deny business licenses to employers who employ
7 unauthorized aliens or other unlawful workers, and may allow lawful
8 employees to bring suit against such employers to recover treble
9 damages and reasonable attorney's fees.

143.992. 1. Any employer subject to the provisions of sections
2 28.800 to 28.812, RSMo, shall submit an affidavit to the department of
3 revenue accompanying each remittance of withholding taxes or in the
4 case of an employer which does not withhold employee taxes, such
5 employer shall submit such affidavit with the annual income tax return
6 required under this chapter. Such affidavit shall be signed by the
7 employer under penalty of perjury and shall specifically state the
8 following:

9 (1) Whether the employer utilized a business expense or business
10 loss deduction in determining federal adjusted gross income;

11 (2) Whether the employer employed any employees including
12 independent contractors, for the tax year in question and the number
13 of such employees;

14 (3) Whether the employer is enrolled in and is actively
15 participating in the basic pilot program;

16 (4) Whether the employer has verified the employment eligibility
17 of every employee, including independent contractors, in his or her
18 employ and all such employees and independent contractors are
19 eligible for employment under 8 U.S.C. 1324a(h)(3);

20 (5) The employer identification number signifying the employer's
21 enrollment in the basic pilot program.

22 2. Failure of an employer to timely submit the affidavit required

23 under subsection 1 of this section may result in an audit by the
24 department of revenue.

25 3. If a determination is made by the director of revenue that the
26 employer has knowingly made a material misrepresentation of fact with
27 regard to any information contained in the affidavit required under
28 subsection 1 of this section, the employer shall be required to add back
29 business expense deductions taken to determine federal adjusted gross
30 income in order to determine Missouri adjusted gross income to the
31 extent such deductions constituted wages paid to employees, including
32 independent contractors, whose employment eligibility was not verified
33 under the basic pilot program.

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

172.360. 1. All youths, resident of the state of Missouri, shall be admitted
2 to all the privileges and advantages of the various classes of all the departments
3 of the University of the State of Missouri[;], provided[,] that each applicant for
4 admission [therein] shall possess such scholastic attainments and mental and
5 moral qualifications as shall be prescribed in rules adopted and established by
6 the board of curators[; and provided further, that]. **However, aliens**
7 **unlawfully present in the United States shall not be eligible for**
8 **admission to the university.** The board of curators may charge and collect
9 reasonable tuition and other fees necessary for the maintenance and operation of
10 all departments of the university, as they may deem necessary.

11 2. **Prior to approval of any appropriations by the general**
12 **assembly for the University of Missouri, the registrar for each campus**
13 **of the University of Missouri shall annually certify to the education**
14 **appropriations committee of the house of representatives and the**
15 **appropriations committee of the senate that its campus has not**
16 **knowingly admitted any aliens unlawfully present in the United States**
17 **in the preceding year.**

174.130. 1. Each board may make such rules and regulations for the
2 admission of students as may be deemed proper. **However, aliens unlawfully**
3 **present in the United States shall not be eligible for admission to the**
4 **university or college.**

5 2. **Prior to approval of any appropriations by the general**
6 **assembly for the university or college, the registrar for each university**

7 or college shall annually certify to the education appropriations
8 committee of the house of representatives and the appropriations
9 committee of the senate that its university or college has not knowingly
10 admitted any aliens unlawfully present in the United States in the
11 preceding year.

175.025. 1. The board of curators of Lincoln University may
2 make such rules and regulations for the admission of students as it may
3 be deemed proper; provided that aliens unlawfully present in the
4 United States shall not be eligible for admission to the university.

5 2. Prior to approval of any appropriations by the general
6 assembly for the university, the registrar shall annually certify to the
7 education appropriations committee of the house of representatives
8 and the appropriations committee of the senate that the university has
9 not knowingly admitted any aliens unlawfully present in the United
10 States in the preceding year.

178.635. 1. The board of regents of Linn State Technical College shall
2 organize in the manner provided by law for the board of curators of the
3 University of Missouri. The powers, duties, authority, responsibilities, privileges,
4 immunities, liabilities and compensation of the board of Linn State Technical
5 College in regard to Linn State Technical College shall be the same as those
6 prescribed by statute for the board of curators of the University of Missouri in
7 regard to the University of Missouri, except that Linn State Technical College
8 shall be operated only as a state technical college. Nothing in this section shall
9 be construed to authorize Linn State Technical College to become a community
10 college or a university offering four-year or graduate degrees.

11 2. All lawful bonded indebtedness incurred by the issuance of revenue
12 bonds, as defined in section 176.010, RSMo, by Linn Technical College, shall be
13 deemed to be an indebtedness of the board of regents of Linn State Technical
14 College after the date upon which the conditions of section 178.631 are met. Such
15 indebtedness shall be retired through tuition revenues.

16 3. The board of regents may make such rules and regulations for
17 the admission of students as it may be deemed proper. However, aliens
18 unlawfully present in the United States shall not be eligible for
19 admission to Linn State Technical College.

20 4. Prior to approval of any appropriations by the general
21 assembly for Linn State Technical College, the registrar shall annually

22 **certify to the education appropriations committee of the house of**
23 **representatives and the appropriations committee of the senate that**
24 **the college has not knowingly admitted any aliens unlawfully present**
25 **in the United States in the preceding year.**

178.780. 1. Tax supported junior colleges formed prior to October 13,
2 1961, and those formed under the provisions of sections 178.770 to 178.890 shall
3 be under the supervision of the coordinating board for higher education.

4 2. The coordinating board for higher education shall:

5 (1) Establish the role of the two-year college in the state;

6 (2) Set up a survey form to be used for local surveys of need and potential
7 for two-year colleges; provide supervision in the conducting of surveys; require
8 that the results of the studies be used in reviewing applications for approval; and
9 establish and use the survey results to set up priorities;

10 (3) Require that the initiative to establish two-year colleges come from the
11 area to be served;

12 (4) Administer the state financial support program;

13 (5) Supervise the junior college districts formed under the provisions of
14 sections 178.770 to 178.890 and the junior colleges now in existence and formed
15 prior to October 13, 1961;

16 (6) Formulate and put into effect uniform policies as to budgeting, record
17 keeping, and student accounting;

18 (7) Establish uniform minimum entrance requirements and uniform
19 curricular offerings for all junior colleges **and ensure that aliens unlawfully**
20 **present in the United States are not eligible for admission to any junior**
21 **college;**

22 (8) Make a continuing study of junior college education in the state; and

23 (9) Be responsible for the accreditation of each junior college under its
24 supervision. Accreditation shall be conducted annually or as often as deemed
25 advisable and made in a manner consistent with rules and regulations
26 established and applied uniformly to all junior colleges in the state. Standards
27 for accreditation of junior colleges shall be formulated with due consideration
28 given to curriculum offerings and entrance requirements of the University of
29 Missouri.

178.786. **Prior to approval of any appropriations by the general**
2 **assembly for a junior college, the registrar for the college shall**
3 **annually certify to the education appropriations committee of the**

4 house of representatives and the appropriations committee of the
5 senate that its junior college has not knowingly admitted any aliens
6 unlawfully present in the United States in the preceding year.

208.009. 1. No alien unlawfully present in the United States shall
2 receive any state or local public benefit, except for state or local public
3 benefits that are required to be offered by 8 U.S.C. 1621(b). Nothing in
4 this section shall be construed to prohibit the rendering of emergency
5 medical care, emergency assistance, or legal assistance to any person.

6 2. As used in this section "public benefit" means any grant,
7 contract, loan, or license provided by an agency of state or local
8 government; or any retirement, welfare, health, disability, housing,
9 postsecondary education, food assistance, or unemployment benefit
10 under which payments, assistance, credits, or reduced rates or fees are
11 provided.

12 3. In addition to providing proof of other eligibility
13 requirements, at the time of application for any state or local public
14 benefit, an applicant who is eighteen years of age or older shall provide
15 affirmative proof that the applicant is a citizen or a permanent resident
16 of the United States or is lawfully present in the United States. Such
17 affirmative proof shall include documentary evidence recognized by the
18 department of revenue when processing an application for a driver's
19 license, as well as any document issued by the federal government that
20 confirms an alien's lawful presence in the United States.

21 4. An applicant who cannot provide the proof required under
22 this section at the time of application may alternatively sign an
23 affidavit under oath, attesting to either United States citizenship or
24 classification by the United States as an alien lawfully admitted for
25 permanent residence, in order to receive temporary benefits or
26 temporary identification document as provided in this section. The
27 affidavit shall include the applicant's Social Security number and an
28 explanation of the penalties under state law for obtaining public
29 assistance benefits fraudulently.

30 5. An applicant who has provided the sworn affidavit required
31 under subsection 4 of this section is eligible to receive temporary
32 public benefits as follows:

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

35 earlier; or

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

42 6. An applicant who is an alien shall not receive any state or
43 local public benefit unless the alien's lawful presence in the United
44 States is first verified by the federal government, under 8 U.S.C.
45 1373(c). State and local agencies administering public benefits in this
46 state shall cooperate with the United States Department of Homeland
47 Security in achieving verification of an alien's lawful presence in the
48 United States in furtherance of this section. The system utilized may
49 include the Systematic Alien Verification for Entitlements Program
50 operated by the United States Department of Homeland Security.

Bill ✓

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