

## EXPLANATION OF PENALTIES AND ENFORCEMENT PROCESS

### HB 1549 – EMPLOYER PROVISIONS OF “OMNIBUS IMMIGRATION BILL”

**Enforcement:**

**Attorney General:** The Attorney General has the following duties under the statute:

- Investigate and commence enforcement actions of violations under the process and penalties set out for “business entities” in general and additional penalties for public contractors. (285.535 RSMo)
- Promulgate rules to implement the provisions of sections 285.525 to 285.550. (285.540 RSMo)
- Maintain a database of those business entities whose local business licenses, permits or exemptions have been suspended and public contractors whose state contracts have been terminated. (285.543 RSMo).

**Enforcement Process (285.535 RSMo):**

- A “written signed complaint under penalty of perjury” may be submitted to the Attorney General by any “state official, business entity or state resident.” Complaint must include a description of the alleged violations and the “actions constituting the violation” and the “date and locations where such actions occurred.” A complaint based “solely or primarily” on “national origin, ethnicity or race” shall be deemed as invalid. (285.535.2 RSMo)
- Attorney General must request identity information from the business entity regarding any persons alleged to be unauthorized aliens, within fifteen business days of receiving a valid complaint. The request must be made by certified mail. (285.535.3 RSMo)
- If the business fails to provide requested information within fifteen business days of receiving such request, the Attorney General shall direct the applicable municipal or county “governing body” to suspend any applicable license, permit or exemption of such business entity. (285.535.3 RSMo)
- Upon receipt of identity information from the business entity, the Attorney General shall submit such information to the federal government under 8 USC 1373 to verify the immigration status of persons alleged to be unauthorized. (285.535.4 RSMo)
- Upon return of such information by the federal government, the Attorney General shall notify the business entity of the response from the federal government. (285.535.4 RSMo)
  - If the response is that the federal government is unable to verify whether an employee is authorized, the Attorney General shall take no further action until verification from the federal government is received.
  - If the response is that the employee(s) who are the subject of the complaint are authorized to work, the Attorney General shall take no further action.
  - If the response is that the employee(s) are not authorized to work and the employer is a participant in a Federal Work Authorization Program, the employer shall correct the violation by:
    - Terminating the unauthorized aliens employment; or
    - After obtaining additional information from the employee, the employer may request a secondary or additional verification by the federal government of the employee’s authorization status under the Federal Work Authorization Program. (285.535.6 RSMo)
  - If the response is that the employee(s) are not authorized to work and the business entity is not enrolled in a Federal Work Authorization Program, the Attorney General “shall bring

a civil action in Cole County if the Attorney General reasonably believes the business entity knowingly violated” the prohibition against hiring unauthorized aliens. (285.535.5 (2) RSMo)

- If the court finds the business entity did not knowingly violate the prohibition, the business may remedy the violations within fifteen business days by terminating the employee, or obtaining additional information from the employee and requesting recertification from the federal government and filing a sworn statement the violation has ended.

If the business fails to comply, the court shall direct the applicable municipality or county to suspend the business permit, licenses or exemptions of the business entity until the business entity has complied. (285.535.5 (2)(a) RSMo)

- If the court finds the business entity knowingly violated the prohibition, the court shall direct the city or county governing body to suspend business licenses, permits or exemptions for fourteen days. Such licenses or permits may be reinstated at the end of fourteen days if the business entity terminated the unauthorized alien(s), or after obtaining additional information from the employee requests re-verification by the federal government, and files a sworn affidavit that the violation has ended and presents documentation to the Attorney General that the business entity has enrolled in a Federal Work Authorization Program. (285.535.5 (2)(b) RSMo)

- A violation, with respect to employment of an “unauthorized alien” may be remedied at any time, whether a complaint has been filed or not, by the following actions:

- 1) Taking either of the following actions regarding the employee:
  - Termination of the employee; or
  - Obtaining additional information from the employee and requesting re-verification from the federal government.

AND

- 2) Taking both of the following actions regarding future compliance:
  - Filing a sworn affidavit stating the violation has ended describing the specific measures and actions taken by the business entity to end the violation; and
  - Documentation provided to the Attorney General confirming enrollment in a Federal Work Authorization Program.

(285.535.6 RSMo)

**Penalties:**

- Any “Business Entity”
  - Provisions for suspension of business licenses, permits and exemptions as steps in the complaint process are specified above.
  - The suspension of business licenses under such process terminates one business day after a legal representative of the business entity complies with steps 1) and 2) specified above. (285.535.7 RSMo)
  - If a business entity is found by a court to have violated the prohibition of employing an unauthorized alien for the second time, the court shall direct the applicable municipality or county to suspend licenses, permits or exemptions for one year. (285.535.8)
  - For subsequent violations such permits, licenses and exemptions are permanently suspended. (285.535.8 RSMo)

- Public Contractors: Public contractors are subject to the same license sanctions as other business entities, but are also subject to the following additional penalties:
  - First Violation – Business entity “shall” be deemed in breach of contract and the state “may” terminate the contract and suspend or debar the business entity from state work for three years. Upon termination the state may withhold up to 25% of the amount owed on the contract.
  - Second or Subsequent Violation – 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 termination of contract the state may withhold 25% of the amount owed.

(285.535.9 RSMo)

**Protections for Employers**

**“Safe Harbor” or “Affirmative Defense”:**

- If there is a complaint and the federal government responds to the Attorney General that an employee is not authorized to work and the business entity participates in a Federal Work Authorization Program “there shall be a rebuttable presumption that the employer met the requirements for an affirmative defense . . .” (285.535.5(1) RSMo)
- Any business entity that participates in a Federal Work Authorization Program shall have an “affirmative defense” that the entity has not knowingly hired an unauthorized alien. (285.530.4 RSMo)
- Any business entity which terminates an employee in accordance with the statute is not liable for any claims by the employee. (285.535.15 RSMo).

***Appeals and Challenges***

- A business entity is not denied the procedural mechanisms and legal defenses offered under a Federal Work Authorization Program by operation of state law. (285.535.10 RSMo)
- A business entity may challenge the enforcement of sanctions and requirements in the courts of the State of Missouri. (285.535.11 RSMo)
- The federal government shall make the determination as to whether an employee is authorized or unauthorized which shall be a rebuttable presumption as to the employee’s status regarding actions under the state law. The court may ask the federal government for automated or testimonial verification. (285.535.13 RSMo)

***“Frivolous Claims”***

- If a court finds a complaint to be frivolous it shall dismiss the case. (285.535.12 RSMo)
- Any person submitting a frivolous complaint is subject to an action by the business entity for actual, compensatory and punitive damages for “holding the alleged violator before the public in a false light.” (285.535.12 RSMo)
- If the court finds a complaint frivolous or determines there is no probable cause that there was a violation, the Attorney General must issue such report to the complainant and alleged violator with the reasons for dismissal of the complaint. The complaint and all related materials become a public record upon such report. (285.535.12 RSMo)