

Analysis of New Missouri Immigration Legislation

Summer 2008

[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
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HOUSE BILL NOS. 1549, 1771, 1395 & 2366

94TH GENERAL ASSEMBLY

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.

Analysis developed in partnership between the Missouri Association for Social Welfare's Human Rights Task Force and the Missouri Immigrant and Refugee Advocates



Missouri Association for Social Welfare



Introduction

On May 16, 2008 the Missouri Legislature truly agreed to and finally passed House Bill 1549, 1771, 1395 & 2366—an omnibus bill titled “Illegal Aliens and Immigration Status Verification.” House Bill 1549 et al. was signed into law by Missouri Governor Matt Blunt on July 7, 2008.

Most provisions of the bill will go into effect on August 28, 2008 — except for sections 67.307 Sanctuary Cities, 285.525-285.555 Misclassification of Employees and Missouri Employers, and 650.681 Communication with Federal Government that go into effect on January 1, 2009; and 292.675 Occupational Safety and Health Administration (OSHA) Training which is effective August 28, 2009. 577.900 relating to status verification upon arrest shall only be effective for the Department of Public Safety (the highway patrol, water patrol, capitol police, fire marshal's office, and division of alcohol and tobacco control) until August 28, 2009.

The following is an analysis of the legislation with brief discussion regarding aspects of the legislation deemed to be significant by MASW and MIRA. Though the analysis presented here is a public document, it was conceived as an accessible guide for service providers navigating the implementation of various parts of the new law.

Analysis

LAW ENFORCEMENT (Section 43.032, RSMo)

Summary:

Subject to appropriations, the Superintendent of the State Highway Patrol is required to “designate some or all members of the patrol to be trained in accordance with a memorandum of understanding between Missouri and the United States Department of Homeland Security concerning the enforcement of federal immigration laws during the course of their normal duties in Missouri.”¹

Discussion:

The summary above refers to an agreement between the state of Missouri and the United States Department of Homeland Security (DHS). Agreements of this type, wherein local or state officers are deputized to enforce federal immigration law, are permitted by Section 287(g) of the Immigration and Nationality Act (INA). Section 287(g) was added to the INA in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act.

Essentially, state or local law enforcement officials who are trained in accordance with section 287(g) have the authority of U.S. Immigration and Customs Enforcement Agents when acting within the scope of the duties outlined in the memorandum of understanding (also known as a memorandum of agreement – MOU or MOA). The Missouri Highway Patrol was already in the process of seeking the training following an [August 27, 2007](#) directive from Governor Matt Blunt.² As a result of this section of HB1549 et al., it is now

required that “some or all members of the patrol”¹ be designated for this training subject to appropriations.

The state of Missouri entered into a MOA on June 25, 2008.³ On [July 11, 2008](#) the Governor’s office announced that the first 10 members of the Missouri Highway Patrol had graduated from 287(g) training. The Missouri Legislature appropriated \$84,000 to assist with the costs of the training.⁴

MIRA and MASW are concerned, specifically, with the potential for racial profiling on Missouri’s roadways and in other areas where these task force officers are stationed.

SANCTUARY CITIES (Section 67.307, RSMo)

Summary:

No county, city, town, or village may enact a sanctuary policy. Any municipality that enacts a sanctuary policy will be ineligible for any state grants until the policy is repealed or is no longer in effect. A sanctuary policy is defined as:

- “(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.”⁵

Discussion:

Currently, Missouri has no municipalities that fall under this definition. However, the bill went through numerous changes on its way to passage including a change from the original language on sanctuary cities. Originally, the bill forbade “written or unwritten” sanctuary policies, and many believed that the provision was aimed at Kansas City, MO. However, that original language created a gray area as related to the definition of an “unwritten policy” and how it might be enforced. The final language was amended to state: “No municipality shall enact or adopt any sanctuary policy.” This implies that the policy must be in writing.

There is a provision that upon complaint from any state resident or by request of any member of the General Assembly an opinion may be requested from the Attorney General on whether or not a municipality has a sanctuary policy. The language of the bill includes no recourse for, or prohibition of so-called frivolous complaints in Section 67.307—meaning that municipalities may be subject to an investigation by the Attorney General’s office and potential public scrutiny simply based upon the complaint of an individual.

Some municipalities in Missouri have begun to adopt measures that prohibit the future adoption of sanctuary policies. These policies seem to be aimed at protecting state funding for the municipality rather than statements of anti-sanctuary ideology.

PUBLIC BENEFITS (Section 208.009, RSMo)

Summary:

Persons unlawfully present in the United States are prohibited from receiving a state or local public benefit unless it is offered under [8 U.S.C. 1621\(b\)](#).⁶

Discussion:

This section is basically a reiteration of the federal law concerning eligibility for public benefits. The allowed benefits under 8 U.S.C. 1621(b) are as follows:

- (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b(v)(3) of title 42) of the alien involved and are not related to an organ transplant procedure.
- (2) Short-term, non-cash, in-kind emergency disaster relief.
- (3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
- (4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.⁶

In addition to the benefits outlined in 8 U.S.C. 1621(b), prenatal care and services offering alternatives to abortion continue to be available to women in Missouri, regardless of status. Missouri is one of the few states that guarantees pre-natal care to all women through emergency Medicaid. Advocates worked tirelessly to protect this critical public health need.

Another important provision that advocates secured protects access to services for eligible children. Employees processing applications for public benefits may NOT inquire about the legal status of a custodial parent or guardian applying on behalf of a dependent child who is a citizen or permanent resident of the United States. This provision should actually *improve* access for children especially in mixed status families because parents will be able to seek benefits for their children without fear of recourse. Moreover, additional access to nutrition and preventive healthcare benefits for children helps to secure better public health for the community at large.

At the time of application for any state or local public benefit, applicants must provide evidence of citizenship, permanent residency, or lawful presence. The documentation required was expanded to include documentary evidence recognized by the Department of Revenue

required for a Missouri driver's license. The list of accepted documentation can be found online at:

<http://dor.mo.gov/mvdl/drivers/idrequirements.pdf>

If an applicant cannot provide the documentation above at the time of application, he or she may sign an affidavit stating that he or she is a citizen or lawful permanent resident in order to receive temporary benefits or a temporary identification document. The affidavit shall include any applicable federal identification number including but not limited to a social security number. The applicant may use an Alien Number if applicable. Agencies distributing benefits to eligible non-citizen permanent residents must verify the applicant's eligibility using the Systematic Alien Verification for Entitlements Program (SAVE).

After filing an affidavit, an applicant is eligible to receive benefits for 90 days or until such time that it is determined that the applicant is not lawfully present in the United States. Or, the applicant shall receive benefits indefinitely if he or she has a pending request for a birth certificate from Missouri or any other state.

If an applicant has signed an affidavit stating that he or she is a citizen or lawful permanent resident eligible for benefits, the agency providing assistance **must provide assistance** in obtaining the appropriate documentation. This is great step in removing barriers to service for those who are unfamiliar with or have difficulty navigating the complex state and federal systems.

While MIRA and MASW support the expanded list of acceptable documentation as well as the protections put in place to ensure access for those who are eligible, there are still some concerns regarding documentation. In some cases, an applicant may not be able to meet the burden of proof through documentation (e.g. destruction of state records in a natural disaster such as Hurricane Katrina; birth in a rural area where no birth certificates were issued; etc). Issues in obtaining a birth certificate or other positive identification disproportionately affect low-income, rural, minority, and transient populations.

Nonprofit 501(c)3 organizations are exempt from the provisions of this section.

MISCLASSIFICATION OF EMPLOYEES (Sections 285.309 and 285.500 - 285.515)

Summary:

“Employers with five or more employees are required to file federal 1099-miscellaneous forms with the Department of Revenue...”¹

“Employers are prohibited from knowingly misclassifying a worker as an independent contractor by failing to claim the worker as an employee when the employer knows that the worker is an employee.”¹

Discussion:

Along with organized labor, MIRA and MASW support the provisions outlined in this section because they prevent the exploitation of workers. However, immigrants and immigration are not mentioned in this section.

MISSOURI EMPLOYERS (Sections 285.525 - 285.560)

Summary:

“Business entities and employers are prohibited from knowingly employing, hiring, or continuing to employ” undocumented workers to perform work in Missouri.¹

All business entities receiving a state contract or grant in excess of \$5,000 or a state-administered tax credit, tax abatement, or loan from the state must participate in E-Verify—“a federal work authorization program which enables employers to electronically verify employment eligibility.”¹

“Knowingly employing an undocumented person will result in the suspension of a company's applicable local licenses, permits, and exemptions for 14 days. A second violation will result in suspension for a period of one year. A third or subsequent violation will result in permanent suspension.”¹

Discussion:

This section accounts for fully one-third of the bill. Given the broad definitions of “employer” and “business entity,” non-profits are likely included under these provisions,⁷ and thus will be forced to enroll and participate in E-Verify.¹ Pending litigation on employer sanctions in other states may affect how the Missouri law is enforced.

Any business entity receiving applicable state assistance found by a court to have knowingly violated the state's law:

1. Will be considered in breach of contract
2. May have its contract terminated
3. Can be suspended or debarred from contracting with the state for up to three years (or possibly permanently on second or subsequent occurrences).
4. May forfeit up to 25% of the total amount due from the state.⁸

The Attorney General's Office is responsible for enforcement of the provisions in this section through a complaint driven process.

Complaints may be generated by state officials, business entities, or state residents and must be signed and submitted under penalty of perjury. Complaints also must include:

1. Actions constituting violation of state law
2. Date of actions
3. Location of Actions⁸

Complaints **cannot** be based solely or primarily on national origin, ethnicity, or race.⁸

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) TRAINING

(Section 292.675)

Summary:

All contractors and subcontractors who contract with the state to work on public works projects “must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within 60 days of beginning work on the construction project.”¹

Discussion:

Along with organized labor, MIRA and MASW support the provisions outlined in this section because they increase the safety of workers. However, immigrants and immigration are not mentioned in this section.

DRIVERS’ LICENSES (Sections 302.063, 302.720, and 578.570)

Summary:

The Department of Revenue is prohibited from issuing drivers’ licenses to undocumented persons as well as to those persons unable to prove lawful presence in the United States.

“Missouri will not extend full faith and credit to out-of-state driver's licenses issued to illegal aliens.”¹

The Commercial Driver's License written test must only be given in English. Translators are not allowed for any portion of the test.

Establishes penalties for driver's license fraud. “A person is prohibited from knowingly or in reckless disregard of the truth:

(a) Assisting any person in committing fraud or deception during a driver's license, nondriver's license, or instruction permit examination process;

(b) Assisting any person in applying for a driver's license, instruction permit, or nondriver's license that contains or is substantiated with false or fraudulent information or documentation, conceals a material fact, or is fraudulent; or

(c) Engaging in a conspiracy to commit any of the preceding acts or aids or abets the commission of any of the acts.”¹

Violating a driver's license fraud provision will be a class A misdemeanor.

Discussion:

→ The Missouri legislature has chosen to use inflammatory political language in this section calling the practice of issuing drivers’ licenses to those without

documents a “repugnant” practice. As such, the state of Missouri refuses to extend “full faith and credit” to drivers’ licenses from other states. This language and possible implementation and enforcement scenarios are problematic. The provision could be found to be unconstitutional or could lead to increased racial profiling as the Department of Revenue, police, and other agencies try to identify persons with drivers’ licenses from other states who might be undocumented.

The section stating that “commercial driver's license written test must only be given in English” and the barring of translators is particularly troubling given that one can be completely conversant in a language without being fully literate in it. In fact, Missouri statute already acknowledges this by allowing for alternate testing formats for those who are functionally illiterate. This provision may hurt the Bosnian community in St. Louis as they have found a niche in the trucking industry.

Like Misclassification and OSHA, the Commercial Driver’s License section has no mention of immigrants or immigration.

BAIL (Section 544.470)

Summary:

Bail will be denied to any person a judge “reasonably believes” to be undocumented until the person can provide verification of lawful presence in the United States or until discharged by due course of law.¹

Discussion:

This section is deeply concerning. The statement “a judge reasonably believes that the person is an alien unlawfully present in the United States”¹ may be unconstitutional. It is also appears to be in direct conflict with 577.900 relating to status verification upon arrest.

TRAFFICKING (Section 577.722)

Summary:

It shall be illegal to transport an undocumented person in this state for the purpose of prostitution, drug trafficking, or employment. This crime is a felony punishable with imprisonment for not less than one year, a fine of not less than \$1,000, or both.

Discussion:

Advocates were able to amend this section successfully by removing vague language regarding transporting, harboring and concealing undocumented persons, and replace it with language related to the federal human and drug trafficking statutes. Some protections for victims were also put in place.

STATUS VERIFICATION UPON ARREST (Section 577.900)

Summary:

If an arresting law enforcement agency is unable to establish residency from the documents in possession of the person charged with a crime, the agency must verify residency within 48 hours through the United States Department of Homeland Security. If the prisoner is undocumented, the arresting agency must notify the appropriate federal department.

Discussion:

Under this section, those presented for incarceration must have their citizenship verified. This is already the practice in MO but, like some other verification provisions in the bill, relies on the existence of a federal database that can verify a person's lawful status. While a number of different databases exist (and have been mentioned above), they often have an unacceptably high error rate.

As mentioned above, this provision will only apply to officers employed by the State Highway Patrol, State Water Patrol, Capitol Police, State Fire Marshal's Office, and Division of Alcohol and Tobacco Control within the Department of Public Safety until August 28, 2009.

FRAUD RELATED TO OBTAINING A MISSOURI DRIVER'S LICENSE (Section 578.570)

Summary:

It shall be a Class A misdemeanor to knowing or in reckless disregard of the truth, assist in any of the following related to obtaining an instruction permit, driver's license, or nondriver's license:

- Fraud or deception during the examination;
- Assist in completing a fraudulent or false application;
- Assist in concealing information or otherwise commit fraud in an application;
- Conspire to commit any of the preceding acts or aids or abets any of the preceding acts.¹

Discussion:

This section has no direct references to immigration or additional penalties for helping immigrants obtain fraudulent documents. However, service providers should be aware that helping a client apply for a driver's license could be considered assistance as outlined above.

COMMUNICATION WITH FEDERAL GOVERNMENT (Section 650.681)

Summary:

"No government entity, official or political subdivision can prohibit or restrict any other government entity or official from communicating or cooperating with federal officials on the immigration status of any person in this state. No person or agency can prohibit or restrict any public employee from communicating or cooperating with local, state, or federal officials on the immigration status of any person in this state."¹

Discussion:

Although communication cannot be restricted, this provision should not be construed to mean that a government employee at any level ***must*** inquire about status when it is not pertinent to their interaction with a person. Subsection 6 of this section indicates that agencies providing public benefits as defined by [8 U.S.C. Section 1612](#) are exempt from certain provisions of this section.⁹

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Resources

Additional questions or requests for resources, in-depth position papers, or presentations can be directed to Missouri Immigrant & Refugee Advocates (info@mira-mo.org) or the Missouri Association for Social Welfare (citizenvoice@masw.org)

Acknowledgments

Special Thanks go to attorney Tony Weigel of Kansas City, MO, Rebecca Smith of the National Employment Law Project, and Courtney Prentis, MASW Human Rights Task Force Chair for their analysis and input.

Thanks also go to Jennifer Rafanan, Executive Director of Missouri Immigrant & Refugee Advocates and Joshua Ewing, Policy Coordinator of Missouri Association for Social Welfare for the writing and compiling of this analysis.