

## House Bill 1381 (The Arizona-Styled Bill)

**Sponsor/Co-Sponsors:** Representatives Kraus, Ruestman, Dusenberg, McGhee, Sater and Wells

**Official Link:** <http://www.house.mo.gov/bills081/bills/hb1381.htm>

### Detailed Summary:

1. Charges Missouri's Department of Labor & Relations, Division of Labor Standards with primary enforcement of the statutory scheme. Section 285.400(3).
2. **Requirements applicable to all employers:** The term "employers" includes any person or entity, for profit or not-for-profit, engaging in business activity in the state with any "employees" performing "work." (Sections 285.400(4), (5) and (10) – Note: All terms are broadly defined):
  - a. No business may employ, recruit, hire or continue to employ an unauthorized worker in the state. Section 285.403.1.
  - b. Prohibits any compensation paid to an unauthorized worker to be used as a business expense for state tax purposes. Section 285.406.14.
  - c. Does *not* mandate use of E-Verify/Basic Pilot across the board, but use of the system provides an affirmative defense to state enforcement actions for employers not otherwise required to use the system. Sections 285.403.4 and 285.406.5(1).
3. **Requirements applicable to contractors or a party using a contractor** – A party considered to be a general contractor will be liable for violations of any subcontractor or independent contractor "under the employ" of the general contractor. Section 285.406.13.

In order to avoid liability, a general contractor must verify all subcontractors and independent contractors have enrolled in E-Verify/Basic Pilot and prove its reasonable belief of such enrollment.
4. **Requirements applicable to state contractors or businesses using state resources** include:
  - As a condition for receipt of contract or aid, employer must provide proof of enrollment/participation in E-Verify/Basic Pilot
  - Affirm it does not knowingly employ unauthorized workers. Section 285.403.2.
5. **Requirement applicable to state employers** to enroll and actively participate in E-Verify/Basic Pilot. Section 285.403.3.
6. **The state's enforcement regiment is summarized as follows:**

- a) Complaints of the presence of an unauthorized worker can come from essentially any party. Section 285.406.2.
- b) Employer has 10 days to respond to state's demand for identity information of an unauthorized worker suspected of lacking work authorization. Section 285.406.3.
- c) Failure to timely produce demanded identity information will result in the division's dictate to the secretary of state to in turn mandate local-level governments to suspend the employer's business licenses. Section 285.406.3.
- d) Upon the taking of the identity information from the employer, the state is to then query the federal government regarding the identity and employment authorization of the worker in question and provide written notice of the query to the employer. Section 285.406.4.
- e) If the worker is authorized to work in the U.S., then the state will take no further action (*Note: there is no provision for an employer to recover damages for costs or the stigma of being wrongfully accused of employing an unauthorized worker*). Section 285.406.4(1).
- f) Regardless of whether or not an employer has complied with federal law, if the state scheme identifies that the worker in question lacks work authorization, the following actions are required **if the employer utilizes E-Verify/Basic Pilot:**
  - i. The employer is presumed not to have violated the state's duplicative prohibition of employing the worker without authorization. Section 285.406.5(1); but
  - ii. The employer would be required to terminate or attempt to terminate the worker's employment OR pursue a secondary verification of the worker's employment authorization and submit detailed documentation of these actions. Section 285.406.6(1) and (2).
- g) Regardless of whether or not an employer has complied with federal law, if the state scheme identifies that the worker in question lacks work authorization, the following actions are required **if the employer does not utilize E-Verify/Basic Pilot:**
  - i. After notice and a hearing, the division may determine a *knowing* violation of the state's law occurred. Section 285.406.5(2).
  - ii. If no *knowing* violation is found to have occurred, the employer would be required to terminate or attempt to terminate the worker's employment or pursue a secondary verification of the worker's employment authorization and

submit detailed documentation of these actions. Sections 285.406.5(2)(a), 285.406.6(1) and (2).

- iii. If a *knowing* violation is found to have occurred, then the division is to dictate the secretary of state to in turn mandate local level governments to suspend the employer's business licenses **or exemptions from licensure** within 10 days of the determination. Section 285.406.5(2)(b).
- iv. In order to have the suspension lifted, the employer would be required to terminate or attempt to terminate the worker's employment OR pursue a secondary verification of the worker's employment authorization, and submit detailed documentation of these actions. Sections 285.406.5(2)(a), 285.406.6(1) and (2).
- v. Note that the only stated action that can justify *not* terminating the worker's employment would be if the worker challenged the employment action in *state* court within 10 business days. Section 285.406.6(1). **Pursuing a claim in federal court or with a federal agency would apparently not toll state penalties under the enforcement regiment.** Although the bill provides for judicial review *within the Missouri state court system*, such a challenge does not seem to toll state penalties either. Section 285.406.11.
- vi. Pursuant to Section 285.406.8, if an employer is found to have knowingly violated the state's law two or more times:
  - Then the division is to dictate the secretary of state to in turn mandate local level governments to suspend the employer's business licenses **or exemptions from licensure**
  - In addition to terminating or attempting to terminate the worker's employment or pursuing a secondary verification of the worker's employment authorization and submitting detailed documentation of these actions, the employer would be required to submit evidence of enrollment in E-Verify/Basic Pilot to the state
  - The division would be mandated to forward all documentation of the state-level enforcement action to the federal immigration authorities (Immigration and Customs Enforcement).
- h) All local-level governments **must comply with mandates from the state** to suspend business permits, licenses or exemptions from licensure, **or become ineligible for state funding**. Section 285.406.9. There is no provision for funding local-level enforcement in the bill.