

FIRST REGULAR SESSION

HOUSE BILL NO. 461

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

1052H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto two new sections relating to employment taxes.

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

Section A. Chapter 285, RSMo, is amended by adding thereto two new sections, to be known as sections 285.080 and 285.517, to read as follows:

285.080. 1. (1) This section shall be known and may be cited as the "Employee Reclassification Act".

(2) As used in this section, the term "department" means the Missouri department of labor and industrial relations.

2. The department shall promulgate a rule providing a clear and concise definition of what is an independent contractor and procedures by which the department may change an individual's classification from an independent contractor to an employee, as provided in this section.

3. Notwithstanding any other provision of law to the contrary, for purposes of chapters 287 and 288 and sections 143.191 to 143.265, it shall be presumed, absent conclusive evidence to the contrary, that funds paid to:

(1) A limited liability company, corporation, or entity formed under the applicable assumed name certificate statute organized under chapter 347 or other applicable state statute;

(2) An individual licensed by the state or appropriate local authority, that provides services to multiple customers and whose services are not the same as the services provided by a customer; or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **(3) A licensed attorney in the state of Missouri or an attorney licensed in another**
19 **state who is providing legal services;**

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21 **are funds paid to an independent contractor and not to an employee.**

22 **4. An individual or employer may request an opinion letter from the department**
23 **whether a particular individual should be classified as an employee or an independent**
24 **contractor. If the employer classifies an individual as an independent contractor based**
25 **upon the recommendation in the opinion letter, the department shall not impose a fine or**
26 **additional employment taxes if it subsequently determines the individual is an employee.**

27 **5. If the department conducts an audit and concludes that an individual classified**
28 **as an independent contractor should be reclassified as an employee, the employer shall be**
29 **given a period of sixty days to comply with the finding and, in the absence of fraud, shall**
30 **not be liable for any assessment of employee tax, interest, or fines for the misclassification.**

31 **6. If the department's finding is appealed, the fine and the assessment for interest**
32 **levied against an employer for misclassifying an employee as an independent contractor**
33 **shall be tolled while the finding of the department is appealed, barring the absence of fraud**
34 **on the part of the employer.**

35 **7. The rule shall be published in accordance with chapter 536. The public shall be**
36 **provided a period of time to comment on the proposed rule, and the department shall take**
37 **such comments into consideration prior to issuing a final rule. A copy of the final rule, as**
38 **well as an explanation of the changes contained therein, shall be mailed to every employer**
39 **registered with the department and the department of revenue.**

40 **8. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
41 **created under the authority delegated in this section shall become effective only if it**
42 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
43 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
44 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
45 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
46 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2015,**
47 **shall be invalid and void.**

285.517. Notwithstanding any provision of sections 285.500 to 285.515 or any other
2 **provision of law to the contrary, for any taxpayer undergoing an audit conducted by the**
3 **department of labor and industrial relations regarding classification of an individual as an**
4 **independent contractor or employee, if the taxpayer has been granted relief from the**
5 **imposition of federal employment taxes under Section 530 of the Revenue Act of 1978, as**
6 **amended, for an individual, with the result that the taxpayer can continue to classify the**

7 **individual as an independent contractor for purposes of federal employment taxes, the**
8 **department of labor and industrial relations shall allow the taxpayer to classify the**
9 **individual as an independent contractor for purposes of Missouri employment taxes.**

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