

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1756
98TH GENERAL ASSEMBLY

5036H.02C

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
2 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
2 Reclassification Act".**

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

**5 2. An individual or employer may request an opinion letter from the department
6 regarding whether a particular individual should be classified as an employee or an
7 independent contractor. If the employer classifies an individual as an independent
8 contractor based upon the recommendation in the opinion letter, the department shall not
9 impose a fine or additional employment taxes if it subsequently determines the individual
10 is an employee.**

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

**15 4. If the department's finding is appealed, the fine and the assessment for interest
16 levied against an employer for misclassifying an employee as an independent contractor
17 shall be tolled while the finding of the department is appealed, barring the absence of fraud
18 on the part of the employer.**

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.

285.517. 1. Notwithstanding any provision of sections 285.500 to 285.515 or any other provision of law to the contrary, for any taxpayer undergoing an audit conducted by the department of labor and industrial relations regarding classification of an individual as an independent contractor or employee, if the taxpayer has been granted relief from the imposition of federal employment taxes under Section 530 of the Revenue Act of 1978, as amended, for an individual, with the result that the taxpayer can continue to classify the individual as an independent contractor for purposes of federal employment taxes; has otherwise been exempted from the Federal Unemployment Tax Act; or has previously been allowed such treatment by any Missouri governmental agency, the department of labor and industrial relations and the department of revenue shall allow the taxpayer to classify the individual as an independent contractor for purposes of Missouri employment taxes with a maximum employment tax rate of one percent. Nothing in this section shall be construed to change in any way the status, liabilities, or rights of the individual whose status is at issue. This section terminates the liability of the employer for the Missouri employment taxes at one percent but shall have no effect on the individual whose status is at issue.

2. The department of labor and industrial relations and the department of revenue shall solely rely upon Revenue Ruling 87-41 to determine an employer's Missouri unemployment tax liability.

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