

SECOND REGULAR SESSION

HOUSE BILL NO. 1756

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

5036H.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
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. Notwithstanding any other provision of law to the contrary, for purposes of
6 chapters 287 and 288 and sections 143.191 to 143.265, it shall be presumed, absent
7 conclusive evidence to the contrary, that funds paid to:**

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

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

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

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17 are funds paid to an independent contractor and not to an employee.

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

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

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

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 and the department of revenue shall allow the**
9 **taxpayer to classify the individual as an independent contractor for purposes of Missouri**
10 **employment taxes with a maximum employment tax rate of one percent. Nothing in this**
11 **section shall be construed to change in any way the status, liabilities, or rights of the**
12 **individual whose status is at issue. This section terminates the liability of the employer for**
13 **the Missouri employment taxes at one percent but shall have no effect on the individual**
14 **whose status is at issue.**

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