

SECOND REGULAR SESSION

HOUSE BILL NO. 2498

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PORTER.

5211H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 285.500, 287.020, 288.034, and 387.414, RSMo, and to enact in lieu thereof five new sections relating to the classification of workers.

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

Section A. Sections 285.500, 287.020, 288.034, and 387.414, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 285.500, 285.517,
3 287.020, 288.034, and 387.414, to read as follows:

285.500. For the purposes of sections 285.500 to ~~[285.515]~~ **285.517** the following
2 terms mean:

3 (1) "Employee", any individual who performs services for an employer that would
4 indicate an employer-employee relationship ~~[in satisfaction of the factors in IRS Rev. Rule~~
5 ~~87-41, 1987-1 C.B.296.]~~ **unless such individual is presumed as an independent contractor**
6 **under section 285.517;**

7 (2) "Employer", any individual, organization, partnership, political subdivision,
8 corporation, or other legal entity which has or had in the entity's employ five or more
9 individuals performing public works as defined in section 290.210;

10 (3) "Knowingly", a person acts knowingly or with knowledge:

11 (a) With respect to the person's conduct or to attendant circumstances when the
12 person is aware of the nature of the person's conduct or that those circumstances exist; or

13 (b) With respect to a result of the person's conduct when the person is aware that the
14 person's conduct is practically certain to cause that result.

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. For purposes of this section, any person is conclusively presumed to
2 be an independent contractor who performs work for any employer and satisfies all of
3 the following criteria:

4 (1) The person has signed a written contract with the employer that states the
5 employer's intent to retain the services of the person as an independent contractor and
6 the person is required by the contract to hold any state or local business license and to
7 maintain any occupational license necessary to perform such services; and

8 (2) (a) The person has filed, intends to file, or is contractually required to file, in
9 regard to the fees earned from work, an income tax return with the Internal Revenue
10 Service for a business or for earnings from self-employment; or

11 (b) The person provides his or her services through a business entity including,
12 but not limited to, a partnership, limited liability company or corporation, or through a
13 sole proprietorship; and

14 (3) The person has the right to control the manner and means by which the work
15 is to be accomplished, even though he or she may not have control over the final result of
16 the work, provided that the employer may provide orientation, information, guidance,
17 or suggestions about the employer's products, business, services, customers and
18 operating systems, and training otherwise provided by law; and

19 (4) The person satisfies three or more of the following:

20 (a) The person controls the amount of time personally spent providing services,
21 provided that an agreement may be made with the employer relating to the final
22 completion or final delivery time or schedule, range of hours, or the time entertainment
23 is to be presented if the work contracted for is entertainment;

24 (b) The person has control over where the services are performed, except in the
25 case of services that can only be performed at certain locations;

26 (c) The person is not required to work exclusively with one employer, unless:

27 a. A law, regulation, or ordinance prohibits the person from providing services
28 to more than one employer; or

29 b. A license or permit that the person is required to maintain in order to
30 perform the work limits the person to working for only one employer at a time and
31 requires identification of the employer;

32 (d) The person is free to exercise independent initiative in soliciting others to
33 purchase his or her services;

34 (e) The person is free to hire employees or to contract with assistants, helpers, or
35 substitutes to perform all or some of the work;

36 (f) The person cannot be required to perform additional services without a new
37 or modified contract;

38 **(g) The person obtains a license or other permission from the employer to utilize**
39 **any workspace of the employer in order to perform the work for which the person was**
40 **engaged;**

41 **(h) The employer has been subject to an employment audit by the Internal**
42 **Revenue Service and the Internal Revenue Service has not reclassified the person to be**
43 **an employee or has not reclassified the category of workers to be employees; or**

44 **(i) The person is responsible for maintaining and bearing the costs of any**
45 **required business licenses, insurance, certifications, or permits required to perform**
46 **services.**

47 **2. (1) A person who is not conclusively presumed to be an independent**
48 **contractor for failure to satisfy three or more of the criteria set forth in subdivision (4)**
49 **of subsection 1 of this section shall not be presumed to be an employee.**

50 **(2) For purposes of chapters 287 and 288, all persons who do not otherwise**
51 **satisfy the criteria set forth in this section shall be classified as an employee or an**
52 **independent contractor using the test set forth in the Internal Revenue Service Revenue**
53 **Ruling 87-41, 1987-1 C.B. 296.**

54 **(3) For purposes of this section, any person is conclusively presumed to be an**
55 **independent contractor who satisfies the definition of a direct seller under 26 U.S.C.**
56 **Section 3508(b)(2).**

57 **3. No employer shall be required to classify a person who is considered an**
58 **independent contractor under subsection 1 of this section as an employee, provided that**
59 **the employer may choose to hire and classify such person as an employee at any time.**

60 **4. This section shall not apply to:**

61 **(1) Service consisting of prearranged passenger transport provided by**
62 **transportation network drivers through a digital network offered by a transportation**
63 **network company, as defined in sections 387.400 to 387.440. The independent**
64 **contractor status of transportation network drivers shall be governed exclusively by**
65 **section 387.414;**

66 **(2) Entities described in section 501(c)(3) of the Internal Revenue Code of 1986,**
67 **as amended;**

68 **(3) State or local government entities; or**

69 **(4) Federally recognized Indian tribes.**

70 **5. This section shall not overrule any exemptions from the definition of employee**
71 **or employment found in other sections of state law.**

72 **6. No political subdivision of the state shall enact, establish, mandate, or**
73 **otherwise implement any law, ordinance, or regulation in conflict with the provisions of**
74 **this section.**

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or **as described in section 390.041**, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. The word "employee" also shall not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization. **The division shall refer to section 285.517 to determine whether a person is an independent contractor.**

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

37 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular
38 accident or myocardial infarction suffered by a worker is an injury only if the accident is the
39 prevailing factor in causing the resulting medical condition.

40 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
41 structure of the body and to the personal property which is used to make up the physical
42 structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and
43 other prostheses which are placed in or on the body to replace the physical structure and such
44 disease or infection as naturally results therefrom. These terms shall in no case except as
45 specifically provided in this chapter be construed to include occupational disease in any form,
46 nor shall they be construed to include any contagious or infectious disease contracted during
47 the course of the employment, nor shall they include death due to natural causes occurring
48 while the worker is at work.

49 4. "Death" when mentioned as a basis for the right to compensation means only death
50 resulting from such violence and its resultant effects occurring within three hundred weeks
51 after the accident; except that in cases of occupational disease, the limitation of three hundred
52 weeks shall not be applicable.

53 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
54 occur while traveling from the employee's home to the employer's principal place of business
55 or from the employer's principal place of business to the employee's home are not
56 compensable. The extension of premises doctrine is abrogated to the extent it extends
57 liability for accidents that occur on property not owned or controlled by the employer even if
58 the accident occurs on customary, approved, permitted, usual or accepted routes used by the
59 employee to get to and from their place of employment.

60 6. The term "total disability" as used in this chapter shall mean inability to return to
61 any employment and not merely mean inability to return to the employment in which the
62 employee was engaged at the time of the accident.

63 7. As used in this chapter and all acts amendatory thereof, the term "commission"
64 shall hereafter be construed as meaning and referring exclusively to the labor and industrial
65 relations commission of Missouri, and the term "director" shall hereafter be construed as
66 meaning the director of the department of commerce and insurance of the state of Missouri or
67 such agency of government as shall exercise the powers and duties now conferred and
68 imposed upon the department of commerce and insurance of the state of Missouri.

69 8. The term "division" as used in this chapter means the division of workers'
70 compensation of the department of labor and industrial relations of the state of Missouri.

71 9. For the purposes of this chapter, the term "minor" means a person who has not
72 attained the age of eighteen years; except that, for the purpose of computing the compensation
73 provided for in this chapter, the provisions of section 287.250 shall control.

74 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
75 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
76 "occupational disease", "arising out of", and "in the course of the employment" to include, but
77 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80
78 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc
79 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting,
80 applying, or following those cases.

81 11. For the purposes of this chapter, "occupational diseases due to toxic exposure"
82 shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's
83 pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute
84 myelogenous leukemia, and myelodysplastic syndrome.

85 12. For the purposes of this chapter, "maximum medical improvement" shall mean
86 the point at which the injured employee's medical condition has stabilized and can no longer
87 reasonably improve with additional medical care, as determined within a reasonable degree of
88 medical certainty.

288.034. 1. "Employment" means service, including service in interstate commerce,
2 performed for wages or under any contract of hire, written or oral, express or implied, and
3 notwithstanding any other provisions of this section, service with respect to which a tax is
4 required to be paid under any federal unemployment tax law imposing a tax against which
5 credit may be taken for contributions required to be paid into a state unemployment fund or
6 which, as a condition for full tax credit against the tax imposed by the Federal Unemployment
7 Tax Act, is required to be covered under this law.

8 2. The term "employment" shall include an individual's entire service, performed
9 within or both within and without this state if:

10 (1) The service is localized in this state; or

11 (2) The service is not localized in any state but some of the service is performed in
12 this state and the base of operations, or, if there is no base of operations, then the place from
13 which such service is directed or controlled, is in this state; or the base of operations or place
14 from which such service is directed or controlled is not in any state in which some part of the
15 service is performed but the individual's residence is in this state.

16 3. Service performed by an individual for wages shall be deemed to be employment
17 subject to this law:

18 (1) If covered by an election filed and approved pursuant to subdivision (2) of
19 subsection 3 of section 288.080;

20 (2) If covered by an arrangement pursuant to section 288.340 between the division
21 and the agency charged with the administration of any other state or federal unemployment

22 insurance law, pursuant to which all services performed by an individual for an employing
23 unit are deemed to be performed entirely within this state.

24 4. Service shall be deemed to be localized within a state if the service is performed
25 entirely within such state; or the service is performed both within and without such state, but
26 the service performed without such state is incidental to the individual's service within the
27 state; for example, is temporary or transitory in nature or consists of isolated transactions.

28 5. Service performed by an individual for remuneration shall be deemed to be
29 employment subject to this law unless it is shown to the satisfaction of the division that such
30 services were performed by an independent contractor. In determining the existence of the
31 independent contractor relationship, the ~~[common law of agency right to control shall be
32 applied. The common law of agency right to control test shall include but not be limited to:
33 if the alleged employer retains the right to control the manner and means by which the results
34 are to be accomplished, the individual who performs the service is an employee. If only the
35 results are controlled, the individual performing the service is an independent contractor]~~
36 **division shall refer to section 285.517 to determine whether a person is an independent**
37 **contractor.**

38 6. The term "employment" shall include service performed for wages as an agent-
39 driver or commission-driver engaged in distributing meat products, vegetable products, fruit
40 products, bakery products, beverages (other than milk), or laundry or dry-cleaning services,
41 for his or her principal; or as a traveling or city salesman, other than as an agent-driver or
42 commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the
43 transmission to, his or her principal (except for sideline sales activities on behalf of some
44 other person) of orders from wholesalers, retailers, contractors, or operators of hotels,
45 restaurants, or other similar establishments for merchandise for resale or supplies for use in
46 their business operations, provided:

47 (1) The contract of service contemplates that substantially all of the services are to be
48 performed personally by such individual; and

49 (2) The individual does not have a substantial investment in facilities used in
50 connection with the performance of the services (other than in facilities for transportation);
51 and

52 (3) The services are not in the nature of a single transaction that is not part of a
53 continuing relationship with the person for whom the services are performed.

54 7. Service performed by an individual in the employ of this state or any political
55 subdivision thereof or any instrumentality of any one or more of the foregoing which is
56 wholly owned by this state and one or more other states or political subdivisions, or any
57 service performed in the employ of any instrumentality of this state or of any political
58 subdivision thereof, and one or more other states or political subdivisions, provided that such

59 service is excluded from employment as defined in the Federal Unemployment Tax Act by
60 Section 3306(c)(7) of that act and is not excluded from employment pursuant to subsection 9
61 of this section, shall be employment subject to this law.

62 8. Service performed by an individual in the employ of a corporation or any
63 community chest, fund, or foundation organized and operated exclusively for religious,
64 charitable, scientific, testing for public safety, literary, or educational purposes, or for the
65 prevention of cruelty to children or animals, no part of the net earnings of which inures to the
66 benefit of any private shareholder or individual, or other organization described in Section
67 501(c)(3) of the Internal Revenue Code which is exempt from income tax under Section 501
68 (a) of that code if the organization had four or more individuals in employment for some
69 portion of a day in each of twenty different weeks whether or not such weeks were
70 consecutive within a calendar year regardless of whether they were employed at the same
71 moment of time shall be employment subject to this law.

72 9. For the purposes of subsections 7 and 8 of this section, the term "employment"
73 does not apply to service performed:

74 (1) In the employ of a church or convention or association of churches, or an
75 organization which is operated primarily for religious purposes and which is operated,
76 supervised, controlled, or principally supported by a church or convention or association of
77 churches; or

78 (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise
79 of such minister's ministry or by a member of a religious order in the exercise of duties
80 required by such order; or

81 (3) In the employ of a governmental entity referred to in subdivision (3) of subsection
82 1 of section 288.032 if such service is performed by an individual in the exercise of duties:

83 (a) As an elected official;

84 (b) As a member of a legislative body, or a member of the judiciary, of a state or
85 political subdivision;

86 (c) As a member of the state National Guard or Air National Guard;

87 (d) As an employee serving on a temporary basis in case of fire, storm, snow,
88 earthquake, flood or similar emergency;

89 (e) In a position which, under or pursuant to the laws of this state, is designated as (i)
90 a major nontenured policy-making or advisory position, or (ii) a policy-making or advisory
91 position the performance of the duties of which ordinarily does not require more than eight
92 hours per week; or

93 (4) In a facility conducted for the purpose of carrying out a program of rehabilitation
94 for individuals whose earning capacity is impaired by age or physical or mental deficiency or
95 injury or providing remunerative work for individuals who because of their impaired physical

96 or mental capacity cannot be readily absorbed in the competitive labor market, by an
97 individual receiving such rehabilitation or remunerative work; or

98 (5) As part of an unemployment work-relief or work-training program assisted or
99 financed in whole or in part by any federal agency or an agency of a state or political
100 subdivision thereof, by an individual receiving such work relief or work training; or

101 (6) By an inmate of a custodial or penal institution; or

102 (7) In the employ of a school, college, or university, if such service is performed (i)
103 by a student who is enrolled and is regularly attending classes at such school, college, or
104 university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such
105 spouse commences to perform such service, that (I) the employment of such spouse to
106 perform such service is provided under a program to provide financial assistance to such
107 student by such school, college, or university, and (II) such employment will not be covered
108 by any program of unemployment insurance.

109 10. The term "employment" shall include the service of an individual who is a citizen
110 of the United States, performed outside the United States (except in Canada), if:

111 (1) The employer's principal place of business in the United States is located in this
112 state; or

113 (2) The employer has no place of business in the United States, but:

114 (a) The employer is an individual who is a resident of this state; or

115 (b) The employer is a corporation which is organized under the laws of this state; or

116 (c) The employer is a partnership or a trust and the number of the partners or trustees
117 who are residents of this state is greater than the number who are residents of any one other
118 state; or

119 (3) None of the criteria of subdivisions (1) and (2) of this subsection is met but the
120 employer has elected coverage in this state or, the employer having failed to elect coverage in
121 any state, the individual has filed a claim for benefits, based on such service, under the law of
122 this state;

123 (4) As used in this subsection and in subsection 11 of this section, the term "United
124 States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

125 11. An "American employer", for the purposes of subsection 10 of this section, means
126 a person who is:

127 (1) An individual who is a resident of the United States; or

128 (2) A partnership, if two-thirds or more of the partners are residents of the United
129 States; or

130 (3) A trust, if all of the trustees are residents of the United States; or

131 (4) A corporation organized under the laws of the United States or of any state.

132 12. The term "employment" shall not include:

133 (1) Service performed by an individual in agricultural labor;

134 (a) For the purposes of this subdivision, the term "agricultural labor" means
135 remunerated service performed:

136 a. On a farm, in the employ of any person, in connection with cultivating the soil, or
137 in connection with raising or harvesting any agricultural or horticultural commodity,
138 including the raising, shearing, feeding, caring for, training, and management of livestock,
139 bees, poultry, and furbearing animals and wildlife;

140 b. In the employ of the owner or tenant or other operator of a farm, in connection with
141 the operation, management, conservation, improvement, or maintenance of such farm and its
142 tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a
143 hurricane, if the major part of such service is performed on a farm;

144 c. In connection with the production or harvesting of any commodity defined as an
145 agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as
146 amended (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the ginning of
147 cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or
148 waterways, not owned or operated for profit, used exclusively for supplying and storing water
149 for farming purposes;

150 d. (i) In the employ of the operator of a farm in handling, planting, drying, packing,
151 packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a
152 carrier for transportation to market, in its unmanufactured state, any agricultural or
153 horticultural commodity; but only if such operator produced more than one-half of the
154 commodity with respect to which such service is performed;

155 (ii) In the employ of a group of operators of farms (or a cooperative organization of
156 which such operators are members) in the performance of services described in item (i) of this
157 subparagraph, but only if such operators produced more than one-half of the commodity with
158 respect to which such service is performed;

159 (iii) The provisions of items (i) and (ii) of this subparagraph shall not be deemed to be
160 applicable with respect to service performed in connection with commercial canning or
161 commercial freezing or in connection with any agricultural or horticultural commodity after
162 its delivery to a terminal market for distribution for consumption; or

163 e. On a farm operated for profit if such service is not in the course of the employer's
164 trade or business. As used in this paragraph, the term "farm" includes stock, dairy, poultry,
165 fruit, furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses
166 or other similar structures, used primarily for the raising of agricultural or horticultural
167 commodities, and orchards;

168 (b) The term "employment" shall include service performed after December 31, 1977,
169 by an individual in agricultural labor as defined in paragraph (a) of this subdivision when

170 such service is performed for a person who, during any calendar quarter, paid remuneration in
171 cash of twenty thousand dollars or more to individuals employed in agricultural labor or for
172 some portion of a day in a calendar year in each of twenty different calendar weeks, whether
173 or not such weeks were consecutive, employed in agricultural labor ten or more individuals,
174 regardless of whether they were employed at the same moment of time;

175 (c) For the purposes of this subsection any individual who is a member of a crew
176 furnished by a crew leader to perform service in agricultural labor for any other person shall
177 be considered as employed by such crew leader:

178 a. If such crew leader holds a valid certificate of registration under the Farm Labor
179 Contractor Registration Act of 1963; or substantially all the members of such crew operate or
180 maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized
181 equipment, which is provided by such crew leader; and

182 b. If such individual is not in employment by such other person;

183 c. If any individual is furnished by a crew leader to perform service in agricultural
184 labor for any other person and that individual is not in the employment of the crew leader:

185 (i) Such other person and not the crew leader shall be treated as the employer of such
186 individual; and

187 (ii) Such other person shall be treated as having paid cash remuneration to such
188 individual in an amount equal to the amount of cash remuneration paid to such individual by
189 the crew leader (either on his or her own behalf or on behalf of such other person) for the
190 service in agricultural labor performed for such other person;

191 d. For the purposes of this subsection, the term "crew leader" means an individual
192 who:

193 (i) Furnishes individuals to perform service in agricultural labor for any other person;

194 (ii) Pays (either on his or her own behalf or on behalf of such other person) the
195 individuals so furnished by him or her for the service in agricultural labor performed by them;
196 and

197 (iii) Has not entered into a written agreement with such other person under which
198 such individual is designated as in employment by such other person;

199 (2) Domestic service in a private home except as provided in subsection 13 of this
200 section;

201 (3) Service performed by an individual under the age of eighteen years in the delivery
202 or distribution of newspapers or shopping news but shall not include delivery or distribution
203 to any point for subsequent delivery or distribution;

204 (4) Service performed by an individual in, and at the time of, the sale of newspapers
205 or magazines to ultimate consumers under an arrangement under which the newspapers or
206 magazines are to be sold by him or her at a fixed price, his or her compensation being based

207 on the retention of the excess of such price over the amount at which the newspapers or
208 magazines are charged to him or her, whether or not he or she is guaranteed a minimum
209 amount of compensation for such service, or is entitled to be credited with the unsold
210 newspapers or magazines turned back;

211 (5) Service performed by an individual in the employ of his or her son, daughter, or
212 spouse, and service performed by a child under the age of twenty-one in the employ of his or
213 her father or mother;

214 (6) Except as otherwise provided in this law, service performed in the employ of a
215 corporation, community chest, fund or foundation, organized and operated exclusively for
216 religious, charitable, scientific, literary, or educational purposes, or for the prevention of
217 cruelty to children or animals, no part of the net earnings of which inures to the benefit of any
218 private shareholder or individual;

219 (7) Services with respect to which unemployment insurance is payable under an
220 unemployment insurance system established by an act of Congress;

221 (8) Service performed in the employ of a foreign government;

222 (9) Service performed in the employ of an instrumentality wholly owned by a foreign
223 government:

224 (a) If the service is of a character similar to that performed in foreign countries by
225 employees of the United States government or of an instrumentality thereof; and

226 (b) If the division finds that the foreign government, with respect to whose
227 instrumentality exemption is claimed, grants an equivalent exemption with respect to similar
228 service performed in the foreign country by employees of the United States government and
229 of instrumentalities thereof. The certification of the United States Secretary of State to the
230 United States Secretary of Treasury shall constitute prima facie evidence of such equivalent
231 exemption;

232 (10) Service covered by an arrangement between the division and the agency charged
233 with the administration of any other state or federal unemployment insurance law pursuant to
234 which all services performed by an individual for an employing unit during the period
235 covered by the employing unit's approved election are deemed to be performed entirely
236 within the jurisdiction of such other state or federal agency;

237 (11) Service performed in any calendar quarter in the employ of a school, college or
238 university not otherwise excluded, if such service is performed by a student who is enrolled
239 and regularly attending classes at such school, college, or university, and the remuneration for
240 such service does not exceed fifty dollars (exclusive of board, room, and tuition);

241 (12) Service performed by an individual for a person as a licensed insurance agent, a
242 licensed insurance broker, or an insurance solicitor, if all such service performed by such
243 individual for such person is performed for remuneration solely by way of commissions;

244 (13) Domestic service performed in the employ of a local college club or of a local
245 chapter of a college fraternity or sorority, except as provided in subsection 13 of this section;

246 (14) Services performed after March 31, 1982, in programs authorized and funded by
247 the Comprehensive Employment and Training Act by participants of such programs, except
248 those programs with respect to which unemployment insurance coverage is required by the
249 Comprehensive Employment and Training Act or regulations issued pursuant thereto;

250 (15) Service performed by an individual who is enrolled at a nonprofit or public
251 educational institution which normally maintains a regular faculty and curriculum and
252 normally has a regularly organized body of students in attendance at the place where its
253 educational activities are carried on, as a student in a full-time program, taken for credit at
254 such institution, which combines academic instruction with work experience, if such service
255 is an integral part of such program, and such institution has so certified to the employer;
256 except, that this subdivision shall not apply to service performed in a program established for
257 or on behalf of an employer or group of employers;

258 (16) Services performed by a licensed real estate salesperson or licensed real estate
259 broker if substantially all of the remuneration, whether or not paid in cash, for the services
260 performed, rather than to the number of hours worked, is directly related to sales or other
261 output, including the performance of services, performed pursuant to a written contract
262 between such individual and the person for whom the services are performed and such
263 contract provides that the individual will not be treated as an employee with respect to such
264 services for federal tax purposes;

265 (17) Services performed as a direct seller who is engaged in the trade or business of
266 the delivering or distribution of newspapers or shopping news, including any services directly
267 related to such trade or business, or services performed as a direct seller who is engaged in the
268 trade or business of selling, or soliciting the sale of, consumer products in the home or
269 otherwise than in, or affiliated with, a permanent, fixed retail establishment, if eighty percent
270 or more of the remuneration, whether or not paid in cash, for the services performed rather
271 than the number of hours worked is directly related to sales performed pursuant to a written
272 contract between such direct seller and the person for whom the services are performed, and
273 such contract provides that the individual will not be treated as an employee with respect to
274 such services for federal tax purposes;

275 (18) Services performed as a volunteer research subject who is paid on a per-study
276 basis for scientific, medical or drug-related testing for any organization other than one
277 described in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

278 13. The term "employment" shall include domestic service as defined in subdivisions
279 (2) and (13) of subsection 12 of this section performed after December 31, 1977, if the

280 employing unit for which such service is performed paid cash wages of one thousand dollars
281 or more for such services in any calendar quarter after December 31, 1977.

282 14. The term "employment" shall include or exclude the entire service of an
283 individual for an employing unit during a pay period in which such individual's services are
284 not all excluded under the foregoing provisions, on the following basis: if the services
285 performed during one-half or more of any pay period constitute employment as otherwise
286 defined in this law, all the services performed during such period shall be deemed to be
287 employment; but if the services performed during more than one-half of any such pay period
288 do not constitute employment as otherwise defined in this law, then none of the services for
289 such period shall be deemed to be employment. (As used in this subsection, the term "pay
290 period" means a period of not more than thirty-one consecutive days for which a payment of
291 remuneration is ordinarily made to the individual by the employing unit employing such
292 individual.) This subsection shall not be applicable with respect to service performed in a pay
293 period where any such service is excluded pursuant to subdivision (8) of subsection 12 of this
294 section.

295 15. The term "employment" shall not include the services of a full-time student who
296 performed such services in the employ of an organized summer camp for less than thirteen
297 calendar weeks in such calendar year.

298 16. For the purpose of subsection 15 of this section, an individual shall be treated as a
299 full-time student for any period:

300 (1) During which the individual is enrolled as a full-time student at an educational
301 institution; or

302 (2) Which is between academic years or terms if:

303 (a) The individual was enrolled as a full-time student at an educational institution for
304 the immediately preceding academic year or term; and

305 (b) There is a reasonable assurance that the individual will be so enrolled for the
306 immediately succeeding academic year or term after the period described in paragraph (a) of
307 this subdivision.

308 17. For the purpose of subsection 15 of this section, an "organized summer camp"
309 shall mean a summer camp which:

310 (1) Did not operate for more than seven months in the calendar year and did not
311 operate for more than seven months in the preceding calendar year; or

312 (2) Had average gross receipts for any six months in the preceding calendar year
313 which were not more than thirty-three and one-third percent of its average gross receipts for
314 the other six months in the preceding calendar year.

315 18. The term "employment" shall not mean service performed by a remodeling
316 salesperson acting as an independent contractor; however, if the federal Internal Revenue

317 Service determines that a contractual relationship between a direct provider and an individual
318 acting as an independent contractor pursuant to the provisions of this subsection is in fact an
319 employer-employee relationship for the purposes of federal law, then that relationship shall be
320 considered as an employer-employee relationship for the purposes of this chapter.

387.414. **1.** Except as provided in section 387.433, all TNC **and** DNC drivers shall
2 be independent contractors and not employees of the TNC **or** DNC if all of the following
3 conditions are met:

4 (1) The TNC **or** DNC does not prescribe specific hours during which a TNC **or** DNC
5 driver must be logged into the TNC's **or** DNC's digital network;

6 (2) The TNC **or** DNC imposes no restrictions on the TNC **or** DNC driver's ability to
7 utilize digital networks from other TNCs **or** DNCs;

8 (3) The TNC **or** DNC does not restrict a TNC **or** DNC driver from engaging in any
9 other occupation or business; and

10 (4) The TNC **or** DNC and TNC **or** DNC driver agree in writing that the driver is an
11 independent contractor with respect to the TNC **or** DNC.

12 **2. For purposes of this section, the following terms mean:**

13 (1) **"Delivery network company" or "DNC", a business entity that maintains an**
14 **online-enabled application or platform used to facilitate on-demand delivery services**
15 **within the state of Missouri. Delivery services are on-demand when a DNC driver is**
16 **given the option to accept or decline each delivery request and the DNC may not**
17 **terminate the contract of the application-based driver for not accepting a specific**
18 **delivery service request;**

19 (2) **"Delivery services", the fulfillment of a delivery request. A delivery request**
20 **includes the pickup from any location of any item or items and the delivery of the item**
21 **or items to a location selected by a customer located within fifty miles of the pickup**
22 **location. Delivery services may be performed using a passenger vehicle, bicycle, scooter,**
23 **public transportation, or similar means of transportation. Such services may also be**
24 **performed on foot. Delivery services may include the selection, collection, or purchase**
25 **of items by a DNC driver, as well as other tasks incidental to a delivery, including the**
26 **selection, collection, or purchase of items by a DNC driver when those tasks are done in**
27 **connection with a delivery the DNC driver has agreed to deliver. Delivery services do**
28 **not, however, include any services requiring the use of a vehicle weighing in excess of six**
29 **thousand pounds;**

30 (3) **"DNC driver", a person who provides delivery services through a DNC's**
31 **online-enabled application or platform.**

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