

SECOND REGULAR SESSION

# HOUSE BILL NO. 2664

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ROWLAND.

5682H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 8.051, 178.910, 178.920, 178.931, 178.940, 205.970, 205.972, 205.973, 290.500, and 337.505, RSMo, and to enact in lieu thereof ten new sections relating to persons with disabilities.

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

Section A. Sections 8.051, 178.910, 178.920, 178.931, 178.940, 205.970, 205.972, 205.973, 290.500, and 337.505, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 8.051, 178.910, 178.920, 178.931, 178.940, 205.970, 205.972, 205.973, 290.500, and 337.505, to read as follows:

8.051. 1. The commissioner of administration shall establish a gift shop in the museum of the state capitol.

2. The commissioner shall contract with the licensing agent, as defined in section 8.700 to operate the capitol gift shop, as provided in section 8.705; provided, however, that the gift shop shall be staffed by persons who are legally blind or otherwise ~~handicapped~~ **disabled**.

3. At least fifty percent of the items on sale in the gift shop will be items made, on consignment, by the sheltered workshops operating within the state. "Sheltered workshops" as used in this section shall be defined as in section 178.900.

178.910. 1. A sheltered workshop shall provide a controlled work environment and a program designed toward enabling the ~~handicapped~~ person **with disabilities** enrolled to progress toward normal living and to develop, as far as possible, his **or her** capacity, performance and relationship with other persons.

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.

5           2. A sheltered workshop shall, so far as possible, provide work experience sufficiently  
6 diverse to accommodate the needs of each of the [handicapped] persons **with disabilities** enrolled.

7           3. A sheltered workshop shall coordinate and integrate its services with all community  
8 agencies for the benefit of its employees, and whenever practicable make use of the services  
9 available from these agencies.

178.920. 1. Any group of persons desiring to establish a sheltered workshop which will  
2 be eligible for state aid shall request a certificate of approval from the department. The request  
3 shall be in writing on forms provided by the department, and shall contain such information as  
4 the department may reasonably require.

5           2. Within sixty days after receipt of the request, the department shall hold a hearing to  
6 determine suitability of the proposed sheltered workshop to provide appropriate supervised  
7 employment and rehabilitation for [handicapped] persons **with disabilities**.

8           3. If, after hearing, the department determines that the proposed sheltered workshop will  
9 be a proper agent of the state for the purpose of employment and rehabilitation of [handicapped]  
10 persons **with disabilities**, it shall notify the persons requesting the certificate that they will be  
11 issued a certificate of approval upon filing with the department the applicant's certificate of  
12 incorporation as a not-for-profit corporation and a copy of its charter and bylaws. No provision  
13 of the charter or bylaws shall conflict with the rules and regulations of the department.

14           4. The department may refuse to issue a certificate of authority if it finds that a proposed  
15 sheltered workshop will not be a proper agency of the state for the purpose of employment and  
16 rehabilitation of [handicapped] persons **with disabilities** and it may, after notice and hearing,  
17 revoke the certificate of authority of any sheltered workshop which is no longer qualified because  
18 the need for the workshop no longer exists or for violation of any rule or regulation of the  
19 department.

178.931. 1. Beginning July 1, 2018, and thereafter, the department of elementary and  
2 secondary education shall pay monthly, out of the funds appropriated to it for that purpose, to  
3 each sheltered workshop a sum equal to the amount calculated under subsection 2 of this section  
4 but at least the amount necessary to ensure that at least twenty-one dollars is paid for each  
5 six-hour or longer day worked by ~~a~~ [handicapped] **an employee with disabilities** for each  
6 standard workweek of up to and including thirty-eight hours worked. For each [handicapped  
7 worker] **employee with disabilities** employed by a sheltered workshop for less than a  
8 thirty-eight-hour week or a six-hour day, the workshop shall receive a percentage of the  
9 corresponding amount normally paid based on the percentage of time worked by the  
10 [handicapped] employee **with disabilities**.

11           2. In order to calculate the monthly amount due to each sheltered workshop, the  
12 department shall:

13 (1) Determine the quotient obtained by dividing the appropriation for the fiscal year by  
14 twelve; and

15 (2) Divide the amount calculated under subdivision (1) of this subsection among the  
16 sheltered workshops in proportion to each sheltered workshop's number of hours submitted to  
17 the department for the preceding calendar month.

18 3. The department shall accept, as prima facie proof of payment due to a sheltered  
19 workshop, information as designated by the department, either in paper or electronic format. A  
20 statement signed by the president, secretary, and manager of the sheltered workshop, setting forth  
21 the dates worked and the number of hours worked each day by each ~~handicapped~~ person **with**  
22 **disabilities** employed by that sheltered workshop during the preceding calendar month, together  
23 with any other information required by the rules or regulations of the department, shall be  
24 maintained at the workshop location.

178.940. The department shall be the official agency of this state for the acceptance and  
2 disbursement of funds of the United States government made available to the states for  
3 rehabilitation or employment related services to ~~handicapped~~ **disabled** persons as defined in  
4 section 178.900.

205.970. 1. When approved by the voters pursuant to section 205.971, the governing  
2 body of the county or city not within a county shall appoint a board of directors consisting of a  
3 total of nine members, two of whom shall be related by blood or marriage within the third degree  
4 to a ~~handicapped~~ person **with disabilities**, as defined in section 205.968, and four of whom  
5 shall be public members. At least seven of the board members shall be residents of the county  
6 or city not within a county where the facility is located. After September 28, 1979, all board  
7 members shall be appointed to serve for a term of three years, except that of the first board  
8 appointed after September 28, 1979, three members shall be appointed for one-year terms, three  
9 members for two-year terms and three members for three-year terms. Board members may be  
10 reappointed. The directors shall not receive compensation for their services, but may be  
11 reimbursed for their actual and necessary expenses.

12 2. The administrative control and management of the facility shall rest solely with the  
13 board, and the board shall employ all necessary personnel, fix their compensation, and provide  
14 suitable quarters and equipment for the operation of the facility from funds made available for  
15 this purpose.

16 3. Notwithstanding any provision of law to the contrary, and irrespective of whether or  
17 not a county sheltered workshop or residence facility has been established, the board may  
18 contract to provide services relating in whole or in part to the services which the board may  
19 provide to ~~handicapped~~ persons **with disabilities**, as defined in this law and for such purpose  
20 may expend the tax funds or other funds.

21           4. The board shall elect a chairman, vice chairman, treasurer, and such other officers as  
22 it deems necessary for its membership. Before taking office, the treasurer shall furnish a surety  
23 bond, in an amount to be determined and in a form to be approved by the board, for the faithful  
24 performance of his **or her** duties and faithful accounting of all moneys that may come into his  
25 **or her** hands. The treasurer shall enter into the surety bond with a surety company authorized  
26 to do business in Missouri, and the cost of such bond shall be paid by the board of directors.

27           5. The board shall set rules for admission to the facility, and shall do all other things  
28 necessary to carry out the purposes of sections 205.968 to 205.972.

29           6. The board may contract with any not-for-profit corporation including any corporation  
30 which is incorporated for the purpose of implementing the provisions of sections 178.900 to  
31 178.970 for any common services, or for the common use of any property of either group.

32           7. The board may accept any gift of property or money for the use and benefit of the  
33 facility, and the board is authorized to sell or exchange any such property which it believes  
34 would be to the benefit of the facility so long as the proceeds are used exclusively for facility  
35 purposes. The board shall have exclusive control of all gifts, property or money it may accept;  
36 of all interest or other proceeds which may accrue from the investment of such gifts or money  
37 or from the sale of such property; of all tax revenues collected by the county on behalf of the  
38 facilities or services; and of all other funds granted, appropriated, or loaned to it by the federal  
39 government, the state, or its political subdivisions so long as these resources are used solely to  
40 benefit the facility or related services except those paid for transportation purposes under the  
41 provisions of section 94.645.

42           8. Any board member may, following notice and an opportunity to be heard, be removed  
43 from office by a majority vote of the other members of the board for any of the following  
44 grounds:

45           (1) Failure to attend five consecutive meetings, without good cause;

46           (2) Conduct prejudicial to the good order and efficient operation of the facility or  
47 services; or

48           (3) Neglect of duty. The chairman of the board shall preside at such removal hearing,  
49 unless he or she is the person sought to be removed. In which case the hearing shall be presided  
50 over by another member elected by the majority vote of the other board members. All interested  
51 parties may present testimony and arguments at such hearing, and the witnesses shall be sworn  
52 by oath or affirmation before testifying. Any interested party may, at his or her own expense,  
53 record the proceedings.

54           9. Vacancies in the board occasioned by removals, resignations or otherwise shall be  
55 reported by the board chairman to the mayor's office of a city not within a county or the county  
56 commission or county executive officer and shall be filled in like manner as original

57 appointments; except that, if the vacancy occurs during an unexpired term, the appointment shall  
58 be for only the unexpired portion of that term.

59 10. Individual board members shall not be eligible for employment by the board within  
60 twelve months of termination of service as a member of the board.

61 11. No person shall be employed by the board who is related within the third degree by  
62 blood or by marriage to any member of the board.

205.972. 1. The tax may not be levied to exceed forty cents per each one hundred dollars  
2 assessed valuation therefor except for a county of the first classification having a charter form  
3 of government containing in whole or part a city with a population of more than three hundred  
4 fifty thousand inhabitants, or a county of the first classification having a charter form of  
5 government with a population of at least nine hundred thousand inhabitants voting thereon shall  
6 not levy a tax to exceed twenty cents per each one hundred dollars assessed valuation therefor.

7 2. The question shall be submitted in substantially the following form:

8 OFFICIAL BALLOT

9 Shall \_\_\_\_\_ (name of county or city not within a county) establish, improve,  
10 (and) (or) maintain a sheltered workshop (and) (or) residence facility (and) (or)  
11 related services for developmentally disabled and ~~handicapped~~ **other disabled**  
12 persons, and for which the county or city shall levy a tax of \_\_\_\_\_ (insert exact  
13 amount to be voted upon) cents per each one hundred dollars assessed valuation  
14 therefor?

15  YES

NO

205.973. No employer of a ~~handicapped or developmentally disabled~~ person **with a**  
2 **developmental or other disability** employed in a sheltered workshop shall be liable for any  
3 head tax imposed by any city in this state.

290.500. As used in sections 290.500 to 290.530, the following words and phrases mean:

2 (1) "Agriculture", farming and all its branches including, but not limited to, the  
3 cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting  
4 of any agricultural commodities, the raising of livestock, fish and other marine life, bees,  
5 fur-bearing animals or poultry and any practices performed by a farmer or on a farm as an  
6 incident to or in conjunction with farming operations, including preparation for market, delivery  
7 to storage or to market or to carriers for transportation to market;

8 (2) "Director", the director of the department of labor and industrial relations or his **or**  
9 **her** authorized representative;

10 (3) "Employee", any individual employed by an employer, except that the term  
11 "employee" shall not include:

- 12 (a) Any individual employed in a bona fide executive, administrative, or professional  
13 capacity;
- 14 (b) Any individual engaged in the activities of an educational, charitable, religious, or  
15 nonprofit organization where the employer-employee relationship does not, in fact, exist or  
16 where the services rendered to the organization are on a voluntary basis;
- 17 (c) Any individual standing in loco parentis to foster children in their care;
- 18 (d) Any individual employed for less than four months in any year in a resident or day  
19 camp for children or youth, or any individual employed by an educational conference center  
20 operated by an educational, charitable or not-for-profit organization;
- 21 (e) Any individual engaged in the activities of an educational organization where  
22 employment by the organization is in lieu of the requirement that the individual pay the cost of  
23 tuition, housing or other educational fees of the organization or where earnings of the individual  
24 employed by the organization are credited toward the payment of the cost of tuition, housing or  
25 other educational fees of the organization;
- 26 (f) Any individual employed on or about a private residence on an occasional basis for  
27 six hours or less on each occasion;
- 28 (g) Any ~~handicapped~~ person **with a disability** employed in a sheltered workshop,  
29 certified by the department of elementary and secondary education;
- 30 (h) Any person employed on a casual basis to provide baby-sitting services;
- 31 (i) Any individual employed by an employer subject to the provisions of part A of  
32 subtitle IV of title 49, United States Code, 49 U.S.C. §§ 10101 et seq.;
- 33 (j) Any individual employed on a casual or intermittent basis as a golf caddy, newsboy,  
34 or in a similar occupation;
- 35 (k) Any individual whose earnings are derived in whole or in part from sales  
36 commissions and whose hours and places of employment are not substantially controlled by the  
37 employer;
- 38 (l) Any individual who is employed in any government position defined in 29 U.S.C. §§  
39 203(e)(2)(C)(i)-(ii);
- 40 (m) Any individual employed by a retail or service business whose annual gross volume  
41 sales made or business done is less than five hundred thousand dollars;
- 42 (n) Any individual who is an offender, as defined in section 217.010, who is incarcerated  
43 in any correctional facility operated by the department of corrections, including offenders who  
44 provide labor or services on the grounds of such correctional facility pursuant to section 217.550;
- 45 (o) Any individual described by the provisions of section 29 U.S.C. 213(a) (8);
- 46 (4) "Employer", any person acting directly or indirectly in the interest of an employer in  
47 relation to an employee;

48 (5) "Learner and apprentice", any individual under 20 years of age who has not  
49 completed the required training for a particular job. In no event shall the individual be deemed  
50 a learner or apprentice in the occupation after three months of training except where the director  
51 finds, after investigation, that for the particular occupation a minimum of proficiency cannot be  
52 acquired in three months. In no case shall a person be declared to be a learner or apprentice after  
53 six months of training for a particular employer or job. Employees of an amusement or  
54 recreation business that meets the criteria set out in 29 U.S.C. § 213(a) (3) may be deemed a  
55 learner or apprentice for ninety working days. No individual shall be deemed a learner or  
56 apprentice solely for the purpose of evading the provisions of sections 290.500 to 290.530;

57 (6) "Occupation", any occupation, service, trade, business, industry, or branch or group  
58 of industries or employment or class of employment in which individuals are gainfully  
59 employed;

60 (7) "Wage", compensation due to an employee by reason of his **or her** employment,  
61 payable in legal tender of the United States or checks on banks convertible into cash on demand  
62 at full face value;

63 (8) "Person", any individual, partnership, association, corporation, business, business  
64 trust, legal representative, or any organized group of persons;

65 (9) "Man-day", any day during which an employee performs any agricultural labor for  
66 not less than one hour.

337.505. No person shall use the title of "professional counselor", "counselor" or  
2 "provisional licensed professional counselor" or engage in the practice of professional counseling  
3 in this state unless the person is licensed as required by the provisions of sections 337.500 to  
4 337.540. Sections 337.500 to 337.540 do not apply to:

5 (1) Any person registered, certificated or licensed by this state, another state, or any  
6 recognized national certification agent, acceptable to the committee, to practice any other  
7 occupation or profession while rendering counseling service in the performance of the  
8 occupation or profession for which the person is registered, certificated, or licensed, including  
9 but not limited to physicians, psychologists and attorneys;

10 (2) School counselors, school administration personnel, or classroom teachers, so long  
11 as they are performing their assigned duties within the scope of their employment by a board of  
12 education or private school;

13 (3) Counselors in postsecondary educational institutions so long as they are practicing  
14 within the scope of their employment;

15 (4) Student interns or trainees in counseling procedures pursuing a course of study in  
16 counseling in an institution of higher education or training institution if such activities and

17 services constitute a part of their course of study and provided that such persons are designated  
18 as "counselor interns";

19 (5) Professionals employed by postsecondary educational institutions as counselor  
20 educators so long as they are practicing counseling within the scope of their employment;

21 (6) Duly ordained ministers or clergy or religious workers while functioning in their  
22 ministerial capacity;

23 (7) Alcoholism counselors so long as they serve only individuals with alcohol related  
24 concerns;

25 (8) Any nonresident temporarily employed in this state to render counseling services for  
26 not more than thirty days in any year, if in the opinion of the committee the person would qualify  
27 for a license pursuant to the provisions of sections 337.500 to 337.540, and if the person holds  
28 a license required for counselors in the person's home state or country;

29 (9) Duly accredited Christian Science practitioners, so long as they are practicing within  
30 the scope of Christian Science principles;

31 (10) Counselors employed by the Missouri state department of elementary and secondary  
32 education or the Missouri state bureau for the blind while rendering counseling services in the  
33 performance of their state assigned duties;

34 (11) Professionals employed by vocational and medical rehabilitation facilities  
35 accredited by the commission on the accreditation of rehabilitation facilities, the joint committee  
36 on accreditation of hospitals or other agents acceptable to the committee while rendering  
37 counseling services in the performance of their assigned duties, and so long as they do not use  
38 the title of "counselor";

39 (12) Employees or volunteers of sheltered workshops who are providing meaningful  
40 employment services for ~~handicapped~~ workers **with disabilities**, so long as they do not use the  
41 "counselor" title;

42 (13) Marital therapists or family therapists or both, certified by the American Association  
43 of Marriage and Family Therapists or an agent acceptable to the committee, and their  
44 supervisees, so long as they serve only individuals with marital or family systems concerns, and,  
45 so long as they do not use the titles of "counselor" or "counseling";

46 (14) Staff counselors employed by religious institutions in a religious counseling  
47 ministries program;

48 (15) Drug abuse counselors certified by the department of mental health as meeting  
49 standards in rules promulgated pursuant to section 630.655, certified by the Missouri substance  
50 abuse counselors certification board, or by an agent acceptable to the committee, so long as such  
51 counselors are practicing consistent with such standards, and they are serving only individuals  
52 with drug-related concerns;



53 (16) Social workers, certified by the National Association of Social Workers, Inc., or by  
54 an agent acceptable to the committee, or workers under their supervision so long as they are  
55 doing work consistent with their training and with a code of ethics of the social work profession,  
56 and so long as they do not use the title of "professional counselor";

57 (17) Professionals in the employ of a governmental agency while rendering services in  
58 the performance of their duties;

59 (18) Any person performing counseling, as defined in sections 337.500 to 337.540,  
60 without receiving compensation, monetary or otherwise, and so long as they do not use the title  
61 of "professional counselor";

62 (19) Employment counselors and interviewers, personnel officers, personnel analysts and  
63 consultants and related workers who in the normal course of their duties and responsibilities as  
64 employees of this state may engage in the screening, examination, assessment, referral or  
65 selection of individuals for employment or for consideration for employment;

66 (20) Counselors and employees of employee assistance programs which are members  
67 of the Association of Labor-Management Administrators and Consultants on Alcoholism, Inc.,  
68 a Wisconsin corporation, or its successors or such other accrediting body for EAP Programs  
69 acceptable to the committee who provide evaluation, assessment, information, and referral  
70 services so long as they are performing their assigned duties within the scope of their  
71 employment; provided, however, that this exemption shall not apply to individuals employed by  
72 employee assistance programs who provide direct long-term therapy and counseling services, as  
73 may be defined by regulation, so long as they do not use the title of counselor or counseling;

74 (21) Individuals who are duly certified by the employee assistance certification  
75 commission as administered by the Association of Labor-Management Administrators and  
76 Consultants on Alcoholism, Inc., a Wisconsin corporation, or its successor; so long as the  
77 individual is an employee of a generally recognized employee assistance program and so long  
78 as such individual is performing services within the scope of such individual's employment and  
79 education;

80 (22) Weight loss or weight control consultants or advisors in recognized, legitimate  
81 programs or business environments so long as they serve only individuals or groups who have  
82 weight related concerns and discuss only weight improvement issues and do not use the titles of  
83 "counselor" or "counseling" without using an adjective which describes to the ordinary person  
84 that the counseling is limited to weight loss or weight control;

85 (23) Activity therapists as certified or licensed by their respective professional  
86 organizations including, but not limited to art, music, dance, recreation, and occupation, and who  
87 have received certification or licensure by their respective professional organizations by January  
88 1, 1994, so long as they do not use the titles of "counselor" or "counseling";

89           (24) Professionals certified by the American Board of Medical Psychotherapists and who  
90 have received certification from the American Board of Medical Psychotherapists by January 1,  
91 1994, so long as they do not use the titles of "counselor" or "counseling"; and

92           (25) Transactional analysts certified by the International Transactional Analysis  
93 Association and who have received certification from the International Transactional Analysis  
94 Association as a level one transactional analyst, specializing in clinical application by January  
95 1, 1994, so long as they do not use the titles of "counselor" or "counseling"; or

96           (26) Any person with a doctoral degree in anthropology received on or prior to  
97 December 31, 1989, and which was from an educational institution accredited by one of the  
98 regional accrediting associations approved by the council on postsecondary accreditation;  
99 provided further that said individual has completed at least twenty-four months of supervised  
100 clinical experience in psychotherapy under the supervision of a physician.

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