

SECOND REGULAR SESSION

SENATE BILL NO. 732

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3718S.02I

AN ACT

To repeal section 285.500, RSMo, and to enact in lieu thereof two new sections relating to misclassification of workers.

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

Section A. Section 285.500, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 285.500 and 285.517, to read as follows:

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

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship [in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.], **unless the individual is considered an independent contractor pursuant to section 285.517;**

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

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

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

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

285.517. 1. Any person who performs work for any employer and satisfies all of the following criteria shall be considered an independent

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 contractor:

4 (1) The person has signed a written contract with the employer
5 that states the employer's intent to retain the services of the person as
6 an independent contractor and contains acknowledgments that the
7 person understands that he or she is:

8 (a) Providing services for the employer as an independent
9 contractor;

10 (b) Not going to be treated as an employee of the employer;

11 (c) Not going to be provided by the employer with either
12 workers' compensation benefits pursuant to chapter 287 or
13 unemployment compensation benefits pursuant to chapter 288;

14 (d) Obligated to pay all applicable federal and state income
15 taxes, if any, on any monies earned pursuant to the contractual
16 relationship, and that the employer will not make any tax withholdings
17 from any payments from the employer; and

18 (e) Responsible for the majority of supplies and other variable
19 expenses that he or she incurs in connection with performing the
20 contracted services unless:

21 a. The expenses are for travel that is not local;

22 b. The expenses are reimbursed under an express provision of
23 the contract; or

24 c. The supplies or expenses reimbursed are commonly
25 reimbursed under industry practice;

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

30 (3) The person provides his or her services through a business
31 entity, including but not limited to, a partnership, limited liability
32 company or corporation, or through a sole proprietorship;

33 (4) The person has the right to control the manner and means by
34 which the work is to be accomplished, even though he or she may not
35 have control over the final result of the work, provided that the
36 employer may provide orientation, information, guidance, or
37 suggestions about the employer's products, business, services,
38 customers and operating systems, and training otherwise provided by
39 law; and

40 (5) The person satisfies three or more of the following:

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

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

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

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

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

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

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

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

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

65 (h) The employer has been subject to an employment audit by the
66 Internal Revenue Service and the Internal Revenue Service has not
67 reclassified the person to be an employee or has not reclassified the
68 category of workers to be employees; and

69 (i) The person is responsible for maintaining and bearing the
70 costs of any required business licenses, insurance, certifications, or
71 permits required to perform services.

72 2. No employer shall be required to classify a person who is
73 considered an independent contractor under subsection 1 of this
74 section as an employee, provided that the employer may choose to hire
75 and classify such person as an employee at any time.

76 3. No political subdivision of the state shall enact, establish,

77 **mandate, or otherwise implement any law, ordinance, or regulation in**
78 **conflict with the provisions of this section.**

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Unofficial

Bill

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