

FIRST REGULAR SESSION

SENATE BILL NO. 366

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE.

Read 1st time January 24, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1426L.011

AN ACT

To repeal sections 288.032, 288.034 and 288.100, RSMo 2000, relating to the correction of certain statutory cross-references in chapter 288 of the revised statutes of Missouri, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 288.032, 288.034 and 288.100, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 288.032, 288.034 and 288.100, to read as follows:

288.032. 1. After December 31, 1977, "employer" means:

(1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more except that for the purposes of this definition, wages paid for "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as defined in subdivisions (2) and **[(12)] (13)** of subsection 12 of section 288.034 shall not be considered;

(2) Any employing unit which for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day); except that for the purposes of this definition, services performed in "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and in "domestic services" as defined in subdivisions (2) and **[(12)] (13)** of subsection 12 of section 288.034 shall not be considered;

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

(3) Any governmental entity for which service in employment as defined in subsection 7 of section 288.034 is performed;

(4) Any employing unit for which service in employment as defined in subsection 8 of section 288.034 is performed during the current or preceding calendar year;

(5) Any employing unit for which service in employment as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding calendar year;

(6) Any employing unit for which service in employment as defined in subsection 13 of section 288.034 is performed during the current or preceding calendar year;

(7) Any individual, type of organization or employing unit which has been determined to be a successor pursuant to section 288.110;

(8) Any individual, type of organization or employing unit which has elected to become subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

(9) Any individual, type of organization or employing unit which, having become an employer, has not pursuant to section 288.080 ceased to be an employer;

(10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a condition for approval of this law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

2. (1) Notwithstanding any other provisions of this law, any employer, individual, organization, partnership, corporation, other legal entity or employing unit that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit. Unless the lessor employing unit has timely complied with the provisions of subdivision (3) of this subsection, any employer, individual, organization, partnership, corporation, other legal entity or employing unit which is leasing individuals from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest and penalties due pursuant to this law from any lessor employing unit attributable to wages for services performed for the client lessee entity by individuals leased to the client lessee entity, and the lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent contributions, interest and penalties shall be collected in accordance with the provisions of this chapter.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, any governmental entity or nonprofit organization that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, and has elected to become liable for payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the division payments in lieu of contributions, interest, penalties and surcharges in accordance with section 288.090 on benefits paid to individuals performing services for the client lessees of the lessor employing unit. If the

lessor employing unit has not timely complied with the provisions of subdivision (3) of this subsection, any client lessees with services attributable to and performed for the client lessees shall be jointly and severally liable for any unpaid payments in lieu of contributions, interest, penalties and surcharges due pursuant to this law. The lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessees. Delinquent payments in lieu of contributions, interest, penalties and surcharges shall be collected in accordance with subsection 3 of section 288.090. The election to be liable for payments in lieu of contributions made by a governmental entity or nonprofit organization meeting the definition of "lessor employing unit", may be terminated by the division in accordance with subsection 3 of section 288.090.

(3) In order to relieve a client lessees from joint and several liability and the separate reporting requirements imposed pursuant to this subsection, any lessor employing unit may post and maintain a surety bond issued by a corporate surety authorized to do business in Missouri in an amount equivalent to the contributions or payments in lieu of contributions for which the lessor employing unit was liable in the last calendar year in which he or she accrued contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever amount is the greater, to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties and surcharges for which the lessor employing unit may be, or becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may deposit in a depository designated by the director, securities with marketable value equivalent to the amount required for a surety bond. The securities so deposited shall include authorization to the director to sell any securities in an amount sufficient to pay any contributions or payments in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision, any lessor employing unit may provide the director with an irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit, a lessor employing unit may obtain a certificate of deposit issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. The certificate of deposit shall be pledged to the director until release by the director. As used in this subdivision, the term "certificate of deposit" means a certificate representing any deposit of funds in a state or federally chartered financial institution for a specified period of time which earns interest at a fixed or variable rate, where such funds cannot be withdrawn prior to a specified time without forfeiture of some or all of the earned interest.

(4) Any lessor employing unit which is currently engaged in the business of leasing individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection by

September 28, 1992. Lessor employing units not currently engaged in the business of leasing individuals to client lessees shall comply with subdivision (3) of this subsection before entering into a written lease agreement with client lessees.

(5) As used in this subsection, the term "lessor employing unit" means an independently established business entity, governmental entity as defined in subsection 1 of section 288.030 or nonprofit organization as defined in subsection 3 of section 288.090 which, pursuant to a written lease agreement between the lessor employing unit and the client lessees, engages in the business of providing individuals to any other employer, individual, organization, partnership, corporation, other legal entity or employing unit referred to in this subsection as a client lessee.

(6) The provisions of this subsection shall not be applicable to private employment agencies who provide their employees to employers on a temporary help basis provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

3. After September 30, 1986, notwithstanding any provision of section 288.034, for the purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri division of motor carrier and railroad safety or whose operations are confined to a commercial zone be determined to be the employer of a lessor as defined in section 288.030 or of a driver receiving remuneration from a lessor, provided, however, the term "for-hire motor carrier" shall in no event include an organization described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

4. The owner or operator of a beauty salon or similar establishment shall not be determined to be the employer of a person who utilizes the facilities of the owner or operator but who receives neither salary, wages or other compensation from the owner or operator and who pays the owner or operator rent or other payments for the use of the facilities.

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

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

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

(2) The service is not localized in any state but some of the service is performed in this state and the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or the base of operations or place from which such

service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

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

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

(2) If covered by an arrangement pursuant to section 288.340 between the division and the agency charged with the administration of any other state or federal unemployment insurance law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state.

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

5. Service performed by an individual for remuneration shall be deemed to be employment subject to this law unless it is shown to the satisfaction of the division that such services were performed by an independent contractor. In determining the existence of the independent contractor relationship, the common law of agency right to control shall be applied. The common law of agency right to control test shall include but not be limited to: if the alleged employer retains the right to control the manner and means by which the results are to be accomplished, the individual who performs the service is an employee. If only the results are controlled, the individual performing the service is an independent contractor.

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

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

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

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

7. Service performed by an individual in the employ of this state or any political subdivision

thereof or any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof, and one or more other states or political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" pursuant to subsection 9 of this section, shall be "employment" subject to this law.

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

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

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

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

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

(a) As an elected official;

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

(c) As a member of the state national guard or air national guard;

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

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

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for

individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

or

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

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

12. The term "employment" shall not include:

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

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

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

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

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

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

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

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

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

(b) The term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor as defined in paragraph (a) of this subdivision when such service is performed for a person who, during any calendar quarter, paid remuneration in cash of twenty

thousand dollars or more to individuals employed in agricultural labor or for some portion of a day in a calendar year in each of twenty different calendar weeks, whether or not such weeks were consecutive, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time;

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

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

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

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

i. Such other person and not the crew leader shall be treated as the employer of such individual; and

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

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

i. Furnishes individuals to perform service in agricultural labor for any other person;

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

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

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

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

(4) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse,

and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

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

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

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

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

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

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

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

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

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

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

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

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

(16) Services performed by a licensed real estate salesperson or licensed real estate broker if at least eighty percent of the remuneration, whether or not paid in cash, for the services performed rather than to the number of hours worked is directly related to sales performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;

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

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

13. The term "employment" shall include domestic service as defined in subdivisions (2) and ~~[(12)]~~ **(13)** of subsection 12 of this section performed after December 31, 1977, if the employing unit for which such service is performed paid cash wages of one thousand dollars or more for such services in any calendar quarter after December 31, 1977.

14. The term "employment" shall include or exclude the entire service of an individual for an employing unit during a pay period in which such individual's services are not all excluded under the foregoing provisions, on the following basis: if the services performed during one-half or more of any pay period constitute employment as otherwise defined in this law, all the services performed during such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period do not constitute employment as otherwise defined in this law, then none of the services for such period shall be deemed to be

employment. (As used in this subsection, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit employing such individual.) This subsection shall not be applicable with respect to service performed in a pay period where any such service is excluded pursuant to subdivision [(7)] (8) of subsection 12 of this section.

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

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

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

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

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

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

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

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

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

18. The term "employment" shall not mean service performed by a remodeling salesperson acting as an independent contractor; however, if the federal Internal Revenue Service determines that a contractual relationship between a direct provider and an individual acting as an independent contractor pursuant to the provisions of this subsection is in fact an employer-employee relationship for the purposes of federal law, then that relationship shall be considered as an employer-employee relationship for the purposes of this chapter.

288.100. 1. (1) The division shall maintain a separate account for each employer which is paying contributions, and shall credit each employer's account with all contributions which each employer has paid. A separate account shall be maintained for each employer making payments in lieu of contributions to which shall be credited all such payments made. The account shall also show payments due as provided in section 288.090. The division may close and cancel such separate account after a period of four consecutive calendar years during which such employer has

had no employment in this state subject to contributions. Nothing in this law shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund either on the employer's own behalf or on behalf of such individuals. Except as provided in subdivision (4) of this subsection, regular benefits and that portion of extended benefits not reimbursed by the federal government paid to an eligible individual shall be charged against the accounts of the individual's base period employers who are paying contributions subject to the provisions of subdivision (4) of subsection 3 of section 288.090. With respect to initial claims filed after December 31, 1984, for benefits paid to an individual based on wages paid by one or more employers in the base period of the claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period. Except as provided in paragraph (a) of this subdivision, the maximum amount of extended benefits paid to an individual and charged against the account of any employer shall not exceed one-half of the product obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period.

(a) The provisions of subdivision (1) of this subsection notwithstanding, with respect to weeks of unemployment beginning after December 31, 1978, the maximum amount of extended benefits paid to an individual and charged against the account of an employer which is an employer pursuant to subdivision (3) of subsection 1 of section 288.032 and which is paying contributions pursuant to subsections 1 and 2 of section 288.090 shall not exceed the calculated entitlement for the extended benefit claim based upon the wages appearing within the base period of the extended benefit claim.

(2) Beginning as of June 30, 1951, and as of June thirtieth of each year thereafter, any unassigned surplus in the unemployment compensation fund which is five hundred thousand dollars or more in excess of five-tenths of one percent of the total taxable wages paid by all employers for the preceding calendar year as shown on the division's records on such June thirtieth shall be credited on a pro rata basis to all employer accounts having a credit balance in the same ratio that the balance in each such account bears to the total of the credit balances subject to use for rate calculation purposes for the following year in all such accounts on the same date. As used in this subdivision, the term "unassigned surplus" means the amount by which the total cash balance in the unemployment compensation fund exceeds a sum equal to the total of all employer credit account balances. The amount thus prorated to each separate employer's account shall for tax rating purposes be considered the same as contributions paid by the employer and credited to the employer's account for the period preceding the calculation date except that no such amount can be credited against any contributions due or that may thereafter become due from such employer.

(3) At the conclusion of each calendar quarter the division shall, within thirty days, notify

each employer by mail of the benefits paid to each claimant by week as determined by the division which have been charged to such employer's account subsequent to the last notice.

(4) (a) No benefits based on wages paid for services performed prior to the date of any act for which a claimant is disqualified pursuant to section 288.050 shall be chargeable to any employer directly involved in such disqualifying act.

(b) In the event the deputy has in due course determined pursuant to paragraph (a) of subdivision (1) of subsection 1 of section 288.050 that a claimant quit his work with an employer for the purpose of accepting a more remunerative job with another employer which the claimant did accept and earn some wages therein, no benefits based on wages paid prior to the date of the quit shall be chargeable to the employer the claimant quit.

(c) In the event the deputy has in due course determined pursuant to paragraph (b) of subdivision (1) of subsection 1 of section 288.050 that a claimant quit temporary work in employment with an employer to return to the claimant's regular employer, then, only for the purpose of charging base period employers, all of the wages paid by the employer who furnished the temporary employment shall be combined with the wages actually paid by the regular employer as if all such wages had been actually paid by the regular employer. Further, charges for benefits based on wages paid for part-time work shall be removed from the account of the employer furnishing such part-time work if that employer continued to employ the individual claiming such benefits on a regular recurring basis each week of the claimant's claim to at least the same extent that the employer had previously employed the claimant and so informs the division within thirty days from the date of notice of benefit charges.

(d) No charge shall be made against an employer's account in respect to benefits paid an individual if the gross amount of wages paid by such employer to such individual is four hundred dollars or less during the individual's base period on which the individual's benefit payments are based. Further, no charge shall be made against any employer's account in respect to benefits paid any individual unless such individual was in employment with respect to such employer longer than a probationary period of twenty-eight days, if such probationary period of employment has been reported to the division as required by regulation.

(e) In the event the deputy has in due course determined pursuant to paragraph (c) of subdivision (1) of subsection 1 of section [228.050] **288.050** that a claimant is not disqualified, no benefits based on wages paid for work prior to the date of the quit shall be chargeable to the employer the claimant quit.

(f) Nothing in paragraph (b), (c), (d) or (e) of this subdivision shall in any way affect the benefit amount, duration of benefits or the wage credits of the claimant.

2. The division may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to

merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

3. The division may by regulation provide for the compilation and publication of such data as may be necessary to show the amounts of benefits not charged to any individual employer's account classified by reason no such charge was made and to show the types and amounts of transactions affecting the unemployment compensation fund.

T

Unofficial

Bill

Copy