

FIRST REGULAR SESSION

# SENATE BILL NO. 380

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE.

Read 1st time January 29, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1425L.011

## AN ACT

To repeal section 288.090, RSMo 2000, relating to the implementation of the industrial classification system for determination of employer unemployment contributions, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 288.090, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 288.090, to read as follows:

288.090. 1. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this law. Such contributions shall become due and be paid by each employer to the division for the fund on or before the last day of the month following each calendar quarterly period of three months except when regulation requires monthly payment. Any employer upon application, or pursuant to a general or special regulation, may be granted an extension of time, not exceeding three months, for the making of his quarterly contribution and wage reports or for the payment of such contributions. Payment of contributions due shall be made to the treasurer designated pursuant to section 288.290.

(1) In the payment of any contributions due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent;

(2) Contributions shall not be deducted in whole or in part from the wages of individuals in employment.

2. As of June thirtieth of each year, the division shall establish an average industry

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

contribution rate for the next succeeding calendar year for each of the industrial classification divisions listed in the [Standard Industrial Classification Manual furnished] **industrial classification system established** by the federal government. The average industry contribution rate for each [standard] industrial classification division shall be computed by multiplying total taxable wages paid by each employer in the industrial classification division during the twelve consecutive months ending on June thirtieth by the employer's contribution rate established for the next calendar year and dividing the aggregate product for all employers in the industrial classification division by the total of taxable wages paid by all employers in the industrial classification division during the twelve consecutive months ending on June thirtieth. Each employer will be assigned [to a standard] **an** industrial classification code division as determined by the division in accordance with the definitions contained in the [Standard Industrial Classification Manual] **industrial classification system established by the federal government**, and shall pay contributions at the average industry rate established for the preceding calendar year for the industrial classification division to which it is assigned or two and seven-tenths percent of taxable wages paid by it, whichever is the greater, unless there have been at least twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits. The division shall classify all employers meeting this chargeability requirement for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The division shall determine the contribution rate of each such employer in accordance with sections 288.113 to 288.126. Notwithstanding the provisions of this subsection, any employing unit which becomes an employer pursuant to the provisions of subsection 7 or 8 of section 288.034 shall pay contributions equal to one percent of wages paid by it until its account has been chargeable with benefits for the period of time sufficient to enable it to qualify for a computed rate on the same basis as other employers.

3. Benefits paid to employees of any governmental entity and nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a "nonprofit organization" is an organization (or group of organizations) described in Section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under Section 501(a) of such code.

(1) A governmental entity which, pursuant to subsection 7 of section 288.034, or nonprofit organization which, pursuant to subsection 8 of section 288.034, is, or becomes, subject to this law on or after April 27, 1972, shall pay contributions due under the provisions of subsections 1 and 2 of this section unless it elects, in accordance with this subdivision, to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such

governmental entity or nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, any such election by a governmental entity shall be to pay to the division for the unemployment compensation fund an amount equal to the amount of all regular benefits and all extended benefits paid that is attributable to service in the employ of such governmental entity.

(a) A governmental entity or nonprofit organization which is, or becomes, subject to this law on or after April 27, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year, provided it files with the division a written notice of its election within the thirty-day period immediately following the date of the determination of such subjectivity. The provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall not apply in the calendar year 1998 and each calendar year thereafter, in the case of an employer who has elected to become liable for payments in lieu of contributions.

(b) A governmental entity or nonprofit organization which makes an election in accordance with paragraph (a) of this subdivision will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) A governmental entity or any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

(d) The division, in accordance with such regulations as may be adopted, shall notify each governmental entity or nonprofit organization of any determination of its status of an employer and of the effective date of any election which it makes and of any termination of such election. Such determination shall be subject to appeal as is provided in subsection 4 of section 288.130.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (a) of this subdivision, as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the division shall bill the governmental entity or nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization; except that, with respect to extended benefits paid for weeks of unemployment beginning on or after January 1, 1979, which are attributable to service in the employ of a governmental entity, the governmental entity shall be billed for the full amount of such extended

benefits.

(b) Payment of any bill rendered under paragraph (a) of this subdivision shall be due and shall be made not later than thirty days after such bill was mailed to the last known address of the governmental entity or nonprofit organization or was otherwise delivered to it.

(c) Payments made by the governmental entity or nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that apply to past due contributions. Also, unpaid amounts in lieu of contributions, interest, penalties and surcharges are subject to the same assessment, civil action and compromise provisions of this law as apply to unpaid contributions. Further, the provisions of this law which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) If any governmental entity or nonprofit organization fails to timely file a required quarterly wage report, the division shall assess such entity or organization a penalty as provided in subsections 1 and 2 of section 288.160.

(4) Except as provided in subsection 4 of this section, each employer that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, a governmental entity that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of all regular benefits and all extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer 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.

(5) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subdivision (1) of this subsection, may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon approval of the application, the division shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the application was received and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the director or upon application by the group. Upon establishment

of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all members of the group. The director shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

4. Any employer which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in subdivision (1) of subsection 3 of this section shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previous work not classified as insured work as defined in section 288.030 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

5. Any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. Governmental entities except cities, counties and the state of Missouri which elect to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation fund in an amount equal to one-half of the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter. The provisions of this subsection shall not be effective after September 30, 1993.

6. Beginning October 1, 1993, through December 31, 1993, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate of United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of

total benefit payments chargeable and not chargeable for the calendar quarter.

7. Beginning January 1, 1994, through December 31, 1995, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund. The calendar year surcharge rate will be the base prime rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks as of November thirtieth of the preceding year. The additional surcharge will be the surcharge rate multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

8. Beginning January 1, 1996, through December 31, 1996, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus one-third of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining two-thirds of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

9. Beginning January 1, 1997, through December 31, 1997, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus two-thirds of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining one-third of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

10. Beginning January 1, 1998, and each calendar year thereafter, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for all benefit payments and shall not have charges relieved pursuant to the provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100.

11. (1) For the purposes of this chapter, a common paymaster arrangement will not exist unless approval has been obtained from the division. To receive a division-approved common paymaster arrangement, the related corporation designated to be the common paymaster for the related corporations must notify the division in writing at least thirty days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. The common paymaster shall furnish the name and account number of each corporation in the related group that will be utilizing the one corporation as the common paymaster. The common paymaster shall also notify the division at least thirty days prior to any change in the related group of corporations or

termination of the common paymaster arrangement. The common paymaster shall be responsible for keeping books and records for the payroll with respect to its own employees and the concurrently employed individuals of the related corporations. In order for remuneration to be eligible for the provisions applicable to a common paymaster, the individuals must be concurrently employed and the remuneration must be disbursed through the common paymaster. The common paymaster shall have the primary responsibility for remitting all required quarterly contribution and wage reports, contributions due with respect to the remuneration it disburses as the common paymaster and/or payments in lieu of contributions. The common paymaster shall compute the contributions due as though it were the sole employer of the concurrently employed individuals. If the common paymaster fails to remit the quarterly contribution and wage reports, contributions due and/or payments in lieu of contributions, in whole or in part, it shall remain liable for submitting the quarterly contribution and wage reports and the full amount of the unpaid portion of the contributions due and/or payments in lieu of contributions. In addition, each of the related corporations using the common paymaster shall be jointly and severally liable for submitting quarterly contribution and wage reports, its share of the contributions due and/or payments in lieu of contributions, penalties, interest and surcharges which are not submitted and/or paid by the common paymaster. All contributions due, payments in lieu of contributions, penalties, interest and surcharges which are not timely paid to the division under a common paymaster arrangement shall be subject to the collection provisions of this chapter.

(2) For the purposes of this subsection, "concurrent employment" means the simultaneous existence of an employment relationship between an individual and two or more related corporations for any calendar quarter in which employees are compensated through a common paymaster which is one of the related corporations, those corporations shall be considered one employing unit and be subject to the provisions of this chapter.

(3) For the purposes of this subsection, "related corporations" means that corporations shall be considered related corporations for an entire calendar quarter if they satisfy any one of the following tests at any time during the calendar quarter:

(a) The corporations are members of a "controlled group of corporations". The term "controlled group of corporations" means:

a. Two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

b. Two or more corporations, if five or less persons who are individuals, estates or trusts own stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

(b) In the case of corporations which do not issue stock, at least fifty percent of the members of one corporation's board of directors are members of the board of directors of the other corporations; or

(c) At least fifty percent of one corporation's officers are concurrently officers of the other corporations; or

(d) At least thirty percent of one corporation's employees are concurrently employees of the other corporations.

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