

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 929**  
94TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industrial Relations, February 14, 2008, with recommendation that the Senate Committee Substitute do pass.

3452S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To amend chapter 285, RSMo, by adding thereto nine new sections relating to employee misclassification, with penalty provisions and an emergency clause.

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

Section A. Chapter 285, RSMo, is amended by adding thereto nine new sections, to be known as sections 285.309, 285.500, 285.503, 285.506, 285.509, 285.512, 285.515, 285.518, and 287.133, to read as follows:

**285.309. 1. Every employer doing business in this state who employs five or more employees shall, if applicable, submit federal 1099 miscellaneous forms to the department of revenue. Such forms shall be submitted to the department of revenue within the time lines established for the filing of Missouri Form 99 forms.**

**2. Any employer who intentionally, on five or more occasions, fails to submit information on any employee required under subsection 1 of this section is guilty of a class A misdemeanor and shall be fined not more than one hundred dollars for each time the employer fails to submit the information on or after the fifth occurrence. If the failure is the result of a conspiracy between the employer and the employee or worker to not supply the required report or to supply a false or incomplete report, the fine shall be one thousand dollars for each failure to report or each false or incomplete report on and after the fifth occurrence.**

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

**(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship in**

5 satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.;

6 (2) "Employer", any individual, organization, partnership,  
7 political subdivision, corporation, or other legal entity which has or  
8 had in the entity's employ five or more individuals performing any of  
9 the following services within this state:

10 (a) Construction as defined in section 290.210, RSMo;

11 (b) Public works as defined in section 290.210, RSMo;

12 (c) Maintenance work as defined in section 290.210, RSMo.

285.503. 1. An employer knowingly misclassifies a worker if that  
2 employer fails to claim the worker as an employee but knows, or has  
3 reason to know, that worker is an employee.

4 2. The attorney general may investigate alleged or suspected  
5 violations of sections 285.500 to 285.515 and shall have all powers  
6 provided by sections 407.040 to 407.090, RSMo, in connection with any  
7 investigation of an alleged or suspected violation of sections 285.500 to  
8 285.515 as if the acts enumerated in sections 285.500 to 285.515 are  
9 unlawful acts proscribed by chapter 407, RSMo.

10 3. In addition to the powers set out in subsection 1 of this  
11 section, the attorney general may serve and enforce subpoenas related  
12 to the enforcement of sections 285.500 to 285.515.

285.506. 1. In any action brought under sections 285.500 to  
2 285.515, the state shall have the burden of proving that the employer  
3 misclassified the worker. If the state is unable to produce any evidence  
4 supporting its contention that the alleged misclassified worker is  
5 misclassified, the court shall find that the worker is not an employee  
6 for purposes of that action.

7 2. In any action brought under sections 285.500 to 285.515, there  
8 is a rebuttable presumption that a worker is an employee if the worker  
9 is an unauthorized alien as defined in 8 U.S.C. 1324a(h)(3). To rebut  
10 this presumption, the employer must produce an I-9 form to establish  
11 that the worker is not an unauthorized alien or other documentation  
12 to show that the worker is an independent contractor. If the employer  
13 fails to produce such evidence, the court shall find that the worker is  
14 an employee for purposes of that action.

285.509. 1. The department of labor and industrial relations shall  
2 establish a complaint form to receive complaints about alleged  
3 misclassification of workers. The form shall be made available on the

4 Internet. Upon receiving a complaint, the department shall cross-check  
5 the complaint against any employer records it maintains and shall also  
6 cross-check the complaint against any records maintained by the  
7 department of revenue.

8       2. If the department determines, after conducting the review set  
9 out in subsection 1 of this section, that an employer appears to have  
10 misclassified a worker, it shall forward its determination along with  
11 supporting documentation to the attorney general.

12       3. Upon receiving the department's determination, the attorney  
13 general may request additional information or records from the  
14 department of labor and industrial relations, the department of  
15 revenue, or any other state agency that may have information or  
16 records relevant to the matter. Upon request, the department or other  
17 state agency shall provide the information or records requested. If the  
18 attorney general receives records that are otherwise closed pursuant  
19 to law, the attorney general shall likewise treat any such records  
20 obtained in the course of an investigation as closed records, except that  
21 such records may be used in the course of any action brought under  
22 sections 285.500 to 285.515.

23       4. The department of labor and industrial relations shall have  
24 the authority to promulgate rules necessary to administer the  
25 provisions of this section. Any rule or portion of a rule, as that term is  
26 defined in section 536.010, RSMo, that is created under the authority  
27 delegated in this section shall become effective only if it complies with  
28 and is subject to all of the provisions of chapter 536, RSMo, and, if  
29 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,  
30 are nonseverable and if any of the powers vested with the general  
31 assembly pursuant to chapter 536, RSMo, to review, to delay the  
32 effective date, or to disapprove and annul a rule are subsequently held  
33 unconstitutional, then the grant of rulemaking authority and any rule  
34 proposed or adopted after August 28, 2008, shall be invalid and void.

285.512. 1. Whenever the attorney general has reason to believe  
2 that an employer has engaged in, is engaging in, or is about to engage  
3 in any conduct that would be a violation of sections 285.500 to 285.515,  
4 the attorney general may seek an injunction prohibiting the employer  
5 from engaging in such conduct.

6       2. The attorney general may bring an action for injunctive relief

7 in the circuit court of any county where the alleged violation is  
8 occurring or about to occur.

9       3. In seeking injunctive relief, the attorney general may petition  
10 the court to order that all work contracted for by the employer at any  
11 site of the employer be halted if the court determines that the employer  
12 has engaged in, or is about to engage in, any conduct that would be a  
13 violation of sections 285.500 to 285.515. In addition to such relief, the  
14 court may issue any other order or judgment necessary to prevent the  
15 employer from committing any further violations of sections 285.500 to  
16 285.515.

285.515. 1. If a court determines that an employer has knowingly  
2 misclassified a worker, the court shall enter a judgment in favor of the  
3 state and award penalties in the amount of fifty dollars per day per  
4 misclassified worker up to a maximum of fifty thousand dollars to the  
5 Missouri worker protection fund established in section 285.518.

6       2. If a court determines that an employer has knowingly  
7 misclassified a worker after having been previously adjudicated for  
8 knowing misclassification of a worker, the court shall enter a judgment  
9 in favor of the state and award penalties in the amount of one hundred  
10 dollars per day per misclassified worker up to a maximum of one  
11 hundred thousand dollars to the Missouri worker protection fund  
12 established in section 285.518.

13       3. The court may, in addition to the penalties authorized by this  
14 section, order that attorneys' fees and costs be paid to the state.

15       4. The attorney general may enter into a consent judgment with  
16 any person alleged to have violated sections 285.500 to 285.515.

285.518. There is hereby created in the state treasury the  
2 "Missouri Worker Protection Fund", which shall consist of money  
3 collected under sections 285.500 to 285.515. The state treasurer shall be  
4 custodian of the fund and may approve disbursements from the fund in  
5 accordance with sections 30.170 and 30.180, RSMo. Upon appropriation,  
6 money in the fund shall be used solely for the administration of  
7 sections 285.500 to 285.515. Notwithstanding the provisions of section  
8 33.080, RSMo, to the contrary, any moneys remaining in the fund at the  
9 end of the biennium shall not revert to the credit of the general  
10 revenue fund. The state treasurer shall invest moneys in the fund in  
11 the same manner as other funds are invested. Any interest and moneys

12 earned on such investments shall be credited to the fund. This fund  
13 shall be administered by the attorney general for the purposes of  
14 ensuring that Missouri employers hire employees and subcontract with  
15 workers who are not misclassified. The fund shall consist of:

16 (1) All amounts ordered to be paid into the fund pursuant to  
17 section 285.515;

18 (2) Any amounts appropriated to the fund; and

19 (3) Any voluntary contributions, gifts, or bequests to the fund.

287.133. 1. If an employer fails to provide for access by the  
2 insurer or its authorized representative to its records to enable the  
3 insurer to perform an audit to determine the remuneration earned by  
4 the employer's employees and by any of its uninsured subcontractors  
5 and the employees of any of its uninsured subcontractors during the  
6 policy period, the employer shall be liable to pay to the insurer a total  
7 premium for the policy equal to three times the insurer's then-current  
8 estimate of the annual premium on the expiration date of the  
9 policy. The employer shall also be liable, in addition to the premium,  
10 for costs incurred by the insurer in its attempts to perform an audit,  
11 after the insured has failed upon the insurer's third request during at  
12 least a ninety-day period to provide access, and the insured has  
13 provided no compelling business reason for the failure. This section  
14 shall only apply if the insurer complies with subsection 3 of this  
15 section.

16 2. Prior to an audit, the insurer shall notify employers of their  
17 duty to provide access to records, and contact employers to make  
18 appointments during regular business hours for that purpose.

19 3. Upon the employer's failure to provide access after the  
20 insurer's third request during at least a ninety-day period, the insurer  
21 may notify the employer by certified mail of the increased premium  
22 and the total amount of the costs incurred by the insurer for its  
23 attempts to perform an audit as described under subsection 1 of this  
24 section. Upon the expiration of thirty days after the delivery of the  
25 notice, collection by the insurer of the amount of premium and costs  
26 described under subsection 1 of this section, less all premiums  
27 previously paid by the employer for the policy, shall be fully  
28 enforceable and executable.

29 4. If the employer provides access to its records after having

30 received the notice described in subsection 3 of this section, and if the  
31 insurer then performs the audit to its satisfaction, the insurer shall  
32 revise the total premium and costs payable for the policy by the  
33 employer to reflect the results of its audit.

34       **5. For the purposes of this section, "access" means access at any**  
35 **time during regular business hours during the policy period and within**  
36 **three years after the policy period ends. "Access" shall also include any**  
37 **other time mutually agreed upon by the employer and insurer.**

Section B. Because of the need to provide a level playing field for Missouri  
2 employers and workers, the provisions of section A of this act are deemed  
3 necessary for the immediate preservation of the public health, welfare, peace, and  
4 safety, and are hereby declared to be an emergency within the meaning of the  
5 constitution, and section A of this act shall be in full force and effect upon its  
6 passage and approval.

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Bill

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