

SECOND REGULAR SESSION

# SENATE BILL NO. 929

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS GREEN AND CALLAHAN.

Read 1st time January 10, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

3452S.011

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## AN ACT

To repeal sections 285.300 and 285.302, RSMo, and to enact in lieu thereof 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Section A. Sections 285.300 and 285.302, RSMo, are repealed and nine  
2 new sections enacted in lieu thereof, to be known as sections 285.300, 285.302,  
3 285.500, 285.503, 285.506, 285.509, 285.512, 285.515, and 285.518, to read as  
4 follows:

285.300. 1. Every employer doing business in the state shall require each  
2 newly hired employee to fill out a federal W-4 withholding form. A copy of each  
3 withholding form or an equivalent form containing data required by section  
4 285.304 which may be provided in an electronic or magnetic format shall be sent  
5 to the department of revenue by the employer within twenty days after the date  
6 the employer hires the employee or in the case of an employer transmitting a  
7 report magnetically or electronically, by two monthly transmissions, if necessary,  
8 not less than twelve days nor more than sixteen days apart. For purposes of this  
9 section, the date the employer hires the employee shall be the earlier of the date  
10 the employee signs the W-4 form or its equivalent, or the first date the employee  
11 reports to work, or performs labor or services. Such forms shall be forwarded by  
12 the department of revenue to the division of child support enforcement on a  
13 weekly basis and the information shall be entered into the database, to be known  
14 as the "State Directory of New Hires". The information reported shall be  
15 provided to the National Directory of New Hires established in 42 U.S.C. section  
16 653, other state agencies or contractors of the division as required or allowed by

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

17 federal statutes or regulations. The division of employment security shall  
18 cross-check Missouri unemployment compensation recipients against any federal  
19 new hire database or any other database containing Missouri or other states'  
20 wage information which is maintained by the federal government on a weekly  
21 basis. The division of employment security shall cross-check unemployment  
22 compensation applicants and recipients with Social Security Administration data  
23 maintained by the federal government at least weekly. Effective January 1, 2007,  
24 the division of employment security shall cross-check at least monthly  
25 unemployment compensation applicants and recipients with department of  
26 revenue drivers license databases.

27 **2. Every employer doing business in this state shall, if applicable,**  
28 **submit federal 1099 miscellaneous forms to the department of**  
29 **revenue. Such forms shall be submitted to the department of revenue**  
30 **within the time lines established for the filing of Missouri Form 99**  
31 **forms pursuant to 12 CSR 10-2.110.**

32 **3.** Any employer that has employees who are employed in two or more  
33 states and transmits reports magnetically or electronically may comply with  
34 subsection 1 of this section by:

35 (1) Designating one of the states in which the employer has employees as  
36 the designated state that such employer shall transmit the reports; and

37 (2) Notifying the secretary of Health and Human Services of such  
38 designation.

285.302. Any employer who intentionally, **on five or more occasions,**  
2 fails to submit information on [an] **any** employee required by section 285.300 or  
3 285.304 is guilty of [an infraction] **a class A misdemeanor** and shall be fined  
4 not more than [twenty-five] **one hundred** dollars for each time the employer  
5 fails to submit the information **on or after the fifth occurrence.** If the failure  
6 is the result of a conspiracy between the employer and the employee **or worker**  
7 to not supply the required report or to supply a false or incomplete report the fine  
8 shall be [three hundred fifty] **one thousand** dollars for each failure to report or  
9 each false or incomplete report **one and after the fifth occurrence.**

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

3 (1) "Employee", any individual who, under an ongoing  
4 contractual relationship, performs services for an employer;

5 (2) "Employer", any individual, organization, partnership,  
6 political subdivision, corporation, or other legal entity which has or  
7 had in the entity's employ five or more individuals performing any of

8 the following services within this state:

- 9 (a) Construction work as defined in section 290.210, RSMo;  
10 (b) Public works as defined in section 290.210, RSMo;  
11 (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 defendant is not able to produce any  
4 evidence supporting its contention that the alleged misclassified  
5 worker is an employee, the court shall find that the worker is an  
6 employee 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.

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 at any site of the employer be halted  
11 if the court determines that the employer has engaged in, or is about  
12 to engage in, any conduct that would be a violation of sections 285.500  
13 to 285.515. In addition to such relief, the court may issue any other  
14 order or judgment necessary to prevent the employer from committing  
15 any further violations of sections 285.500 to 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 285.060.

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 285.060.

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 may be  
4 custodian of the fund and shall approve disbursements from the fund  
5 in accordance with sections 30.170 and 30.180, RSMo. Upon  
6 appropriation, money in the fund shall be used solely for the  
7 administration of sections 285.500 to 285.515. Notwithstanding the  
8 provisions of section 33.080, RSMo, to the contrary, any moneys  
9 remaining in the fund at the end of the biennium shall revert to the  
10 credit of the general revenue fund. The state treasurer shall invest  
11 moneys in the fund in the same manner as other funds are  
12 invested. Any interest and moneys earned on such investments shall be  
13 credited to the fund. This fund shall be administered by the attorney  
14 general for the purposes of ensuring that Missouri employers hire  
15 employees and subcontract with workers who are not unauthorized  
16 aliens. The fund shall consist of:

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

19 (2) Any amounts appropriated to the fund;

20 (3) Any interest earned upon any moneys in the fund; and

21 (4) Any voluntary contributions, gifts, or bequests to the fund.

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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