

FIRST REGULAR SESSION

# HOUSE BILL NO. 598

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), ERVIN, KRAUS, NOLTE, JONES (117),  
BIVINS, DAVIS AND MUNZLINGER (Co-sponsors).

Read 1st time January 25, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1466L.01I

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### AN ACT

To repeal section 288.032, RSMo, and to enact in lieu thereof one new section relating to unemployment benefits calculations.

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

Section A. Section 288.032, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.032, to read as follows: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 (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 (13) of subsection 12 of section 288.034 shall not be considered;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (3) Any governmental entity for which service in employment as defined in subsection  
16 7 of section 288.034 is performed;

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

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

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

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

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

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

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

33 2. (1) Notwithstanding any other provisions of this law, any employer, individual,  
34 organization, partnership, corporation, other legal entity or employing unit that meets the  
35 definition of "lessor employing unit", as defined in subdivision (5) of this subsection, shall be  
36 liable for contributions on wages paid by the lessor employing unit to individuals performing  
37 services for client lessees of the lessor employing unit. Unless the lessor employing unit has  
38 timely complied with the provisions of subdivision (3) of this subsection, any employer,  
39 individual, organization, partnership, corporation, other legal entity or employing unit which is  
40 leasing individuals from any lessor employing unit shall be jointly and severally liable for any  
41 unpaid contributions, interest and penalties due pursuant to this law from any lessor employing  
42 unit attributable to wages for services performed for the client lessee entity by individuals leased  
43 to the client lessee entity, and the lessor employing unit shall keep separate records and submit  
44 separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent  
45 contributions, interest and penalties shall be collected in accordance with the provisions of this  
46 chapter.

47 (2) Notwithstanding the provisions of subdivision (1) of this subsection, any  
48 governmental entity or nonprofit organization that meets the definition of "lessor employing  
49 unit", as defined in subdivision (5) of this subsection, and has elected to become liable for  
50 payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the

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

63 (3) In order to relieve a client lessees from joint and several liability and the separate  
64 reporting requirements imposed pursuant to this subsection, any lessor employing unit may post  
65 and maintain a surety bond issued by a corporate surety authorized to do business in Missouri  
66 in an amount equivalent to the contributions or payments in lieu of contributions for which the  
67 lessor employing unit was liable in the last calendar year in which he or she accrued  
68 contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever  
69 amount is the greater, to ensure prompt payment of contributions or payments in lieu of  
70 contributions, interest, penalties and surcharges for which the lessor employing unit may be, or  
71 becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may  
72 deposit in a depository designated by the director, securities with marketable value equivalent  
73 to the amount required for a surety bond. The securities so deposited shall include authorization  
74 to the director to sell any securities in an amount sufficient to pay any contributions or payments  
75 in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails  
76 to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision,  
77 any lessor employing unit may provide the director with an irrevocable letter of credit, as defined  
78 in section [409.5-103] **400.5-102**, RSMo, issued by any state or federally chartered financial  
79 institution, in an amount equivalent to the amount required for a surety bond as described in this  
80 subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit, a lessor  
81 employing unit may obtain a certificate of deposit issued by any state or federally chartered  
82 financial institution, in an amount equivalent to the amount required for a surety bond as  
83 described in this subdivision. The certificate of deposit shall be pledged to the director until  
84 release by the director. As used in this subdivision, the term "certificate of deposit" means a  
85 certificate representing any deposit of funds in a state or federally chartered financial institution  
86 for a specified period of time which earns interest at a fixed or variable rate, where such funds

87 cannot be withdrawn prior to a specified time without forfeiture of some or all of the earned  
88 interest.

89 (4) Any lessor employing unit which is currently engaged in the business of leasing  
90 individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection  
91 by September 28, 1992. Lessor employing units not currently engaged in the business of leasing  
92 individuals to client lessees shall comply with subdivision (3) of this subsection before entering  
93 into a written lease agreement with client lessees.

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

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

104 3. After September 30, 1986, notwithstanding any provision of section 288.034, for the  
105 purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri  
106 division of motor carrier and railroad safety or whose operations are confined to a commercial  
107 zone be determined to be the employer of a lessor as defined in 49 CFR Section 376.2(f), or of  
108 a driver receiving remuneration from a lessor as defined in 49 CFR Section 376.2(f), provided,  
109 however, the term "for-hire motor carrier" shall in no event include an organization described  
110 in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

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

115 **5. For purposes of calculating an employer's contributions under this chapter,**  
116 **"employer" shall not include any individual with any ownership interest in a business who**  
117 **is ineligible for benefits under this chapter by reason of such individual's ownership**  
118 **interest in such business.**

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