

FIRST REGULAR SESSION
[PERFECTED WITH PERFECTING AMENDMENT]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 795
95TH GENERAL ASSEMBLY

1760L.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 144.140, 290.500 and 536.310, RSMo, and to enact in lieu thereof four new sections relating to small businesses, with an emergency clause.

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

Section A. Sections 144.140, 290.500 and 536.310, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 144.140, 290.500, 536.310 and 1, to
3 read as follows:

144.140. **1.** From every remittance to the director of revenue made on or before the date
2 when the same becomes due, the person required to remit the same shall be entitled to deduct and
3 retain an amount equal to two percent thereof.

4 **2. In addition to the amount allowed in subsection 1 of this section from every**
5 **remittance to the director of revenue made on or before the date when the same becomes**
6 **due, any small business required to remit the same shall be entitled to deduct and retain**
7 **an additional one percent thereof.**

8 **3. Subsection 2 of this section shall expire on July 1, 2012.**

290.500. As used in sections 290.500 to 290.530, the following words and phrases mean:

2 (1) "Agriculture", farming and all its branches including, but not limited to, the
3 cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting
4 of any agricultural commodities, the raising of livestock, fish and other marine life, bees,
5 fur-bearing animals or poultry and any practices performed by a farmer or on a farm as an
6 incident to or in conjunction with farming operations, including preparation for market, delivery
7 to storage or to market or to carriers for transportation to market;

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.

8 (2) "Director", the director of the department of labor and industrial relations or his
9 authorized representative;

10 (3) "Employee", any individual employed by an employer, except that the term
11 "employee" shall not include:

12 (a) Any individual employed in a bona fide executive, administrative, or professional
13 capacity;

14 (b) Any individual engaged in the activities of an educational, charitable, religious, or
15 nonprofit organization where the employer-employee relationship does not, in fact, exist or
16 where the services rendered to the organization are on a voluntary basis;

17 (c) Any individual standing in loco parentis to foster children in their care;

18 (d) Any individual employed for less than four months in any year in a resident or day
19 camp for children or youth, or any individual employed by an educational conference center
20 operated by an educational, charitable or not-for-profit organization;

21 (e) Any individual engaged in the activities of an educational organization where
22 employment by the organization is in lieu of the requirement that the individual pay the cost of
23 tuition, housing or other educational fees of the organization or where earnings of the individual
24 employed by the organization are credited toward the payment of the cost of tuition, housing or
25 other educational fees of the organization;

26 (f) Any individual employed on or about a private residence on an occasional basis for
27 six hours or less on each occasion;

28 (g) Any handicapped person employed in a sheltered workshop, certified by the
29 department of elementary and secondary education;

30 (h) Any person employed on a casual basis to provide baby-sitting services;

31 (i) Any individual employed by an employer subject to the provisions of part A of
32 subtitle IV of title 49, United States Code, 49 U.S.C. §§ 10101 et seq.;

33 (j) Any individual employed on a casual or intermittent basis as a golf caddy, newsboy,
34 or in a similar occupation;

35 (k) Any individual whose earnings are derived in whole or in part from sales
36 commissions and whose hours and places of employment are not substantially controlled by the
37 employer;

38 (l) Any individual who is employed in any government position defined in 29 U.S.C. §§
39 203(e)(2)(C)(i)-(ii);

40 (m) Any individual employed by a retail or service business whose annual gross volume
41 sales made or business done is less than five hundred thousand dollars;

42 (n) **Any individual employed by a small retail or service business whose annual**
43 **gross volume sales made or business done is less than one million dollars, for a period not**
44 **to exceed three years, beginning on the effective date of this section;**

45 (o) Any individual who is an offender, as defined in section 217.010, RSMo, who is
46 incarcerated in any correctional facility operated by the department of corrections, including
47 offenders who provide labor or services on the grounds of such correctional facility pursuant to
48 section 217.550, RSMo;

49 [(o)] (p) Any individual described by the provisions of section 29 U.S.C. 213(a) (8);

50 (4) "Employer", any person acting directly or indirectly in the interest of an employer in
51 relation to an employee;

52 (5) "Learner and apprentice", any individual under 20 years of age who has not
53 completed the required training for a particular job. In no event shall the individual be deemed
54 a learner or apprentice in the occupation after three months of training except where the director
55 finds, after investigation, that for the particular occupation a minimum of proficiency cannot be
56 acquired in three months. In no case shall a person be declared to be a learner or apprentice after
57 six months of training for a particular employer or job. Employees of an amusement or
58 recreation business that meets the criteria set out in 29 U.S.C. § 213(a) (3) may be deemed a
59 learner or apprentice for ninety working days. No individual shall be deemed a learner or
60 apprentice solely for the purpose of evading the provisions of sections 290.500 to 290.530;

61 (6) "Occupation", any occupation, service, trade, business, industry, or branch or group
62 of industries or employment or class of employment in which individuals are gainfully
63 employed;

64 (7) "Wage", compensation due to an employee by reason of his employment, payable in
65 legal tender of the United States or checks on banks convertible into cash on demand at full face
66 value;

67 (8) "Person", any individual, partnership, association, corporation, business, business
68 trust, legal representative, or any organized group of persons;

69 (9) "Man-day", any day during which an employee performs any agricultural labor for
70 not less than one hour.

536.310. 1. The board shall:

2 (1) Provide state agencies with input regarding rules that adversely affect small
3 businesses;

4 (2) Solicit input and conduct hearings from small business owners and state agencies
5 regarding any rules proposed by a state agency; and

6 (3) Provide an evaluation report to the governor and the general assembly, including any
7 recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's

8 small businesses. The report shall include comments from small businesses, state agency
9 responses, and a summary of any public testimony on rules brought before the board for
10 consideration.

11 2. In any inquiry conducted by the board because of a request from a small business
12 owner, the board may make recommendations to the state agency. If the board makes
13 recommendations, such recommendations shall be based on any of the following grounds:

14 (1) The rule creates an undue barrier to the formation, operation, and expansion of small
15 businesses in a manner that significantly outweighs the rule's benefits to the public; or

16 (2) New or significant economic information indicates the proposed rule would create
17 an undue impact on small businesses; or

18 (3) Technology, economic conditions, or other relevant factors justifying the purpose for
19 the rule has changed or no longer exists; or

20 (4) If the rule was adopted after August 28, 2004, whether the actual effect on small
21 businesses was not reflected in or significantly exceeded the small business impact statement
22 submitted prior to the adoption of the rules.

23 **3. Subject to appropriations, the board may hire one-half full-time equivalent**
24 **employee for clerical support and one full-time equivalent employee for a professional**
25 **position to:**

26 (1) **Conduct Internet web site additions, corrections, and deletions;**

27 (2) **Develop training programs for agencies;**

28 (3) **Send regulatory alerts to interested small business subscribers;**

29 (4) **Track small business comments regarding agencies and review and respond to**
30 **the agency and small business accordingly;**

31 (5) **Prepare for board meetings and hearings, including outreach, travel, agendas,**
32 **and minutes;**

33 (6) **Prepare member maintenance expense reports and appointments;**

34 (7) **Analyze small business impact statements. After such analysis, the employee**
35 **shall review such statements, offer suggestions, and work with agencies to meet the statute**
36 **requirements;**

37 (8) **Analyze biannual report reviews;**

38 (9) **Conduct agency correspondence and training;**

39 (10) **Conduct small business outreach by speaking at chamber and association**
40 **events;**

41 (11) **Review the Missouri register and other sources to look for proposed rules that**
42 **may affect small business.**

43 **4. Subject to appropriations, the board may receive additional funds for:**

- 44 **(1) Upkeep of its Internet web site;**
45 **(2) Information technology;**
46 **(3) Mileage for board members;**
47 **(4) Publication, printing, and distribution of annual reports; and**
48 **(5) Outreach costs."; and**

Section 1. 1. This section shall be known and may cited as the "Small Business Get Off My Back Act".

3 **2. No user fees imposed in this state shall increase for a period beginning on the**
4 **effective date of this section and not to exceed three years.**

5 **3. No new regulation for small businesses shall be permitted for a period beginning**
6 **on the effective date of this section and not to exceed three years. Such regulation shall**
7 **include, but not be limited to any administrative costs or fees assessed against small**
8 **businesses or any fees or procedures in obtaining a small business license except for**
9 **regulations promulgated as a result of federal mandates.**

Section B. Because immediate action is necessary to synchronize the requirements of
2 section A of this act with the state fiscal year, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared
4 to be an emergency act within the meaning of the constitution, and section A of this act shall be
5 in full force and effect on July 1, 2009, or upon its passage and approval, whichever is later.

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