

FIRST REGULAR SESSION

# HOUSE BILL NO. 795

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DETHROW (Sponsor), FRANZ, SATER, ERVIN, POLLOCK,  
DAY, WELLS, WALLACE, SCHAD, DUGGER, BRANDOM AND SELF (Co-sponsors).

1760L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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

Section A. Sections 144.140 and 290.500, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 144.140, 290.500, and 1, to 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 is done is less than one million dollars, for a period**  
44 **not 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.

**Section 1. 1. This section shall be known and may cited as the "Small Business Get  
2 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 accessed against small**  
8 **businesses or any fees or procedures in obtaining a small business license.**

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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