

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 795**  
95TH GENERAL ASSEMBLY

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Reported from the Committee on Governmental Accountability and Fiscal Oversight, May 7, 2009, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1760S.03C

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**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.

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Section A. Sections 144.140, 290.500 and 536.310, RSMo, are repealed  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

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

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

10 **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  
2 phrases mean:

3 (1) "Agriculture", farming and all its branches including, but not limited  
4 to, the cultivation and tillage of the soil, dairying, the production, cultivation,  
5 growing and harvesting of any agricultural commodities, the raising of livestock,  
6 fish and other marine life, bees, fur-bearing animals or poultry and any practices

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

7 performed by a farmer or on a farm as an incident to or in conjunction with  
8 farming operations, including preparation for market, delivery to storage or to  
9 market or to carriers for transportation to market;

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

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

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

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

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

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

26 (e) Any individual engaged in the activities of an educational organization  
27 where employment by the organization is in lieu of the requirement that the  
28 individual pay the cost of tuition, housing or other educational fees of the  
29 organization or where earnings of the individual employed by the organization are  
30 credited toward the payment of the cost of tuition, housing or other educational  
31 fees of the organization;

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

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

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

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

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

42 (k) Any individual whose earnings are derived in whole or in part from

43 sales commissions and whose hours and places of employment are not  
44 substantially controlled by the employer;

45 (l) Any individual who is employed in any government position defined in  
46 29 U.S.C. §§ 203(e)(2)(C)(i)-(ii);

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

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

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

58 [(o)] (p) Any individual described by the provisions of section 29 U.S.C.  
59 213(a) (8);

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

62 (5) "Learner and apprentice", any individual under 20 years of age who  
63 has not completed the required training for a particular job. In no event shall the  
64 individual be deemed a learner or apprentice in the occupation after three months  
65 of training except where the director finds, after investigation, that for the  
66 particular occupation a minimum of proficiency cannot be acquired in three  
67 months. In no case shall a person be declared to be a learner or apprentice after  
68 six months of training for a particular employer or job. Employees of an  
69 amusement or recreation business that meets the criteria set out in 29 U.S.C. §  
70 213(a) (3) may be deemed a learner or apprentice for ninety working days. No  
71 individual shall be deemed a learner or apprentice solely for the purpose of  
72 evading the provisions of sections 290.500 to 290.530;

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

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

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

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

536.310. 1. The board shall:

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

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

6 (3) Provide an evaluation report to the governor and the general assembly,  
7 including any recommendations and evaluations of state agencies regarding  
8 regulatory fairness for Missouri's small businesses. The report shall include  
9 comments from small businesses, state agency responses, and a summary of any  
10 public testimony on rules brought before the board for consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50           **(1) Upkeep of its Internet web site;**

51           **(2) Information technology;**

52           **(3) Mileage for board members;**

53           **(4) Publication, printing, and distribution of annual reports; and**

54           **(5) Outreach costs.**

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

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

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

          Section B. Because immediate action is necessary to synchronize the  
2 requirements of section A of this act with the state fiscal year, section A of this  
3 act is deemed necessary for the immediate preservation of the public health,

4 welfare, peace, and safety, and is hereby declared to be an emergency act within  
5 the meaning of the constitution, and section A of this act shall be in full force and  
6 effect on July 1, 2009, or upon its passage and approval, whichever is later.

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