

SECOND REGULAR SESSION

# SENATE BILL NO. 1121

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GROSS.

Read 1st time February 27, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5312S.011

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## AN ACT

To repeal sections 32.057, 285.025, and 285.233, RSMo, and to enact in lieu thereof four new sections relating to nonresident and misclassified employees on public works projects, with penalty provisions.

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

Section A. Sections 32.057, 285.025, and 285.233, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 32.057, 285.025,  
3 285.233, and 290.307, to read as follows:

32.057. 1. Except as otherwise specifically provided by law, it shall be  
2 unlawful for the director of revenue, any officer, employee, agent or deputy or  
3 former director, officer, employee, agent or deputy of the department of revenue,  
4 any person engaged or retained by the department of revenue on an independent  
5 contract basis, any person to whom authorized or unauthorized disclosure is made  
6 by the department of revenue, or any person who lawfully or unlawfully inspects  
7 any report or return filed with the department of revenue or to whom a copy, an  
8 abstract or a portion of any report or return is furnished by the department of  
9 revenue to make known in any manner, to permit the inspection or use of or to  
10 divulge to anyone any information relative to any such report or return, any  
11 information obtained by an investigation conducted by the department in the  
12 discharge of official duty, or any information received by the director in  
13 cooperation with the United States or other states in the enforcement of the  
14 revenue laws of this state. Such confidential information is limited to  
15 information received by the department in connection with the administration of  
16 the tax laws of this state.

17 2. Nothing in this section shall be construed to prohibit:

18 (1) The disclosure of information, returns, reports, or facts shown thereby,

19 as described in subsection 1 of this section, by any officer, clerk or other employee  
20 of the department of revenue charged with the custody of such information:

21 (a) To a taxpayer or the taxpayer's duly authorized representative under  
22 regulations which the director of revenue may prescribe;

23 (b) In any action or proceeding, civil, criminal or mixed, brought to enforce  
24 the revenue laws of this state;

25 (c) To the state auditor or the auditor's duly authorized employees as  
26 required by subsection 4 of this section;

27 (d) To any city officer designated by ordinance of a city within this state  
28 to collect a city earnings tax, upon written request of such officer, which request  
29 states that the request is made for the purpose of determining or enforcing  
30 compliance with such city earnings tax ordinance and provided that such  
31 information disclosed shall be limited to that sufficient to identify the taxpayer,  
32 and further provided that in no event shall any information be disclosed that will  
33 result in the department of revenue being denied such information by the United  
34 States or any other state. The city officer requesting the identity of taxpayers  
35 filing state returns but not paying city earnings tax shall furnish to the director  
36 of revenue a list of taxpayers paying such earnings tax, and the director shall  
37 compare the list submitted with the director's records and return to such city  
38 official the name and address of any taxpayer who is a resident of such city who  
39 has filed a state tax return but who does not appear on the list furnished by such  
40 city. The director of revenue may set a fee to reimburse the department for the  
41 costs reasonably incurred in providing this information;

42 (e) To any employee of any county or other political subdivision imposing  
43 a sales tax which is administered by the state department of revenue whose office  
44 is authorized by the governing body of the county or other political subdivision  
45 to receive any and all records of the state director of revenue pertaining to the  
46 administration, collection and enforcement of its sales tax. The request for sales  
47 tax records and reports shall include a description of the type of report requested,  
48 the media form including electronic transfer, computer tape or disk, or printed  
49 form, and the frequency desired. The request shall be made by annual written  
50 application and shall be filed with the director of revenue. The director of  
51 revenue may set a fee to reimburse the department for the costs reasonably  
52 incurred in providing this information. Such city or county or any employee  
53 thereof shall be subject to the same standards for confidentiality as required for  
54 the department of revenue in using the information contained in the reports;

55 (f) To the director of the department of economic development or the  
56 director's duly authorized employees in discharging the director's official duties  
57 to certify taxpayers eligibility to claim state tax credits as prescribed by statutes;

58 (g) To any employee of any political subdivision, such records of the  
59 director of revenue pertaining to the administration, collection and enforcement  
60 of the tax imposed in chapter 149, RSMo, as are necessary for ensuring  
61 compliance with any cigarette or tobacco tax imposed by such political  
62 subdivision. The request for such records shall be made in writing to the director  
63 of revenue, and shall include a description of the type of information requested  
64 and the desired frequency. The director of revenue may charge a fee to reimburse  
65 the department for costs reasonably incurred in providing such information;

66 **(h) To the director of the department of labor and industrial**  
67 **relations or the director's duly authorized employees in discharging the**  
68 **director of revenue's official duties to determine taxpayers' compliance**  
69 **with withholding tax requirements set forth in chapters 143 and 285,**  
70 **RSMo;**

71 (2) The publication by the director of revenue or of the state auditor in the  
72 audit reports relating to the department of revenue of:

73 (a) Statistics, statements or explanations so classified as to prevent the  
74 identification of any taxpayer or of any particular reports or returns and the  
75 items thereof;

76 (b) The names and addresses without any additional information of  
77 persons who filed returns and of persons whose tax refund checks have been  
78 returned undelivered by the United States Post Office;

79 (3) The director of revenue from permitting the Secretary of the Treasury  
80 of the United States or the Secretary's delegates, the proper officer of any state  
81 of the United States imposing a tax equivalent to any of the taxes administered  
82 by the department of revenue of the state of Missouri or the appropriate  
83 representative of the multistate tax commission to inspect any return or report  
84 required by the respective tax provision of this state, or may furnish to such  
85 officer an abstract of the return or report or supply the officer with information  
86 contained in the return or disclosed by the report of any authorized  
87 investigation. Such permission, however, shall be granted on condition that the  
88 corresponding revenue statute of the United States or of such other state, as the  
89 case may be, grants substantially similar privileges to the director of revenue and  
90 on further condition that such corresponding statute gives confidential status to

91 the material with which it is concerned;

92 (4) The disclosure of information, returns, reports, or facts shown thereby,  
93 by any person on behalf of the director of revenue, in any action or proceeding to  
94 which the director is a party or on behalf of any party to any action or proceeding  
95 pursuant to the revenue laws of this state when such information is directly  
96 involved in the action or proceeding, in either of which events the court may  
97 require the production of, and may admit in evidence, so much of such  
98 information as is pertinent to the action or proceeding and no more;

99 (5) The disclosure of information, returns, reports, or facts shown thereby,  
100 by any person to a state or federal prosecuting official, including, but not limited  
101 to, the state and federal attorneys general, or the official's designees involved in  
102 any criminal, quasi-criminal, or civil investigation, action or proceeding pursuant  
103 to the laws of this state or of the United States when such information is  
104 pertinent to an investigation, action or proceeding involving the administration  
105 of the revenue laws or duties of public office or employment connected therewith;

106 (6) Any school district from obtaining the aggregate amount of the  
107 financial institution tax paid pursuant to chapter 148, RSMo, by financial  
108 institutions located partially or exclusively within the school district's boundaries,  
109 provided that the school district request such disclosure in writing to the  
110 department of revenue;

111 (7) The disclosure of records which identify all companies licensed by this  
112 state pursuant to the provisions of subsections 1 and 2 of section 149.035,  
113 RSMo. The director of revenue may charge a fee to reimburse the department for  
114 the costs reasonably incurred in providing such records;

115 (8) The disclosure to the commissioner of administration pursuant to  
116 section 34.040, RSMo, of a list of vendors and their affiliates who meet the  
117 conditions of section 144.635, RSMo, but refuse to collect the use tax levied  
118 pursuant to chapter 144, RSMo, on their sales delivered to this state.

119 3. Any person violating any provision of subsection 1 or 2 of this section  
120 shall, upon conviction, be guilty of a class D felony.

121 4. The state auditor or the auditor's duly authorized employees who have  
122 taken the oath of confidentiality required by section 29.070, RSMo, shall have the  
123 right to inspect any report or return filed with the department of revenue if such  
124 inspection is related to and for the purpose of auditing the department of  
125 revenue; except that, the state auditor or the auditor's duly authorized employees  
126 shall have no greater right of access to, use and publication of information, audit

127 and related activities with respect to income tax information obtained by the  
128 department of revenue pursuant to chapter 143, RSMo, or federal statute than  
129 specifically exists pursuant to the laws of the United States and of the income tax  
130 laws of the state of Missouri.

285.025. 1. The state of Missouri hereby proclaims that no employer who  
2 employs illegal aliens shall be eligible for any state-administered or subsidized  
3 tax credit, tax abatement, or loan from this state, **or a loan from any**  
4 **governing body in this state.** The director of each agency administering or  
5 subsidizing a tax credit, tax abatement or loan pursuant to chapter 32, 100, 135,  
6 253, **349**, 447, or 620, RSMo, shall place in such agency's criteria for eligibility  
7 for such credit, abatement, exemption or loan a signed statement of affirmation  
8 by the applicant that such applicant employs no illegal aliens. Any individual,  
9 individual proprietorship, corporation, partnership, firm or association that is  
10 found by the director of the agency administering the program to have negligently  
11 employed an illegal alien in this state shall be ineligible for any  
12 state-administered or subsidized tax credit, tax abatement, or loan, **or a loan**  
13 **from any governing body in this state,** pursuant to chapter 32, 100, 135, 253,  
14 **349**, 447, or 620, RSMo, for five years following such determination; provided,  
15 however, that the director of the agency administering such credit, abatement,  
16 exemption or loan may, in the director's discretion, elect not to apply such  
17 administrative action for a first-time occurrence. Any person, corporation,  
18 partnership or other legal entity that is found to be ineligible for a  
19 state-administered or subsidized tax credit, tax abatement, or **any** loan pursuant  
20 to this subsection may make an appeal with the administrative hearing  
21 commission pursuant to the provisions of chapter 621, RSMo. "Negligent", for the  
22 purposes of this subsection means that a person has failed to take the steps  
23 necessary to comply with the requirements of 8 U.S.C. 1324a with respect to the  
24 examination of an appropriate document or documents to verify whether the  
25 individual is an unauthorized alien.

26 2. Beginning August 28, 1999, any individual, individual proprietorship,  
27 corporation, partnership, firm or association that knowingly accepts any  
28 [state-administered or subsidized] tax credit, tax abatement or loan in violation  
29 of subsection 1 of this section shall upon conviction be guilty of a class A  
30 misdemeanor, and such action may be brought by the attorney general in Cole  
31 County circuit court.

285.233. 1. Any transient employer, as defined in this chapter, failing to

2 conclusively show at any time that he has complied with the provisions of section  
3 285.230, relating to the filing of a financial assurance instrument, shall, before  
4 beginning performance on any contract made with a political subdivision, deposit  
5 with that political subdivision an amount equal to twenty percent of labor costs  
6 as specified in such contract which will be held in escrow by the political  
7 subdivision and payable only to the department of revenue, the division of  
8 employment security or the division of workers' compensation after the actual  
9 amount of tax liability is determined. In the event that labor costs are not  
10 separately stated in the contract, the amount to be held in escrow shall be ten  
11 percent of the contract amount. Any amount remaining in the escrow fund after  
12 payments are made shall be refunded to the contractor. Failure of a political  
13 subdivision to properly escrow funds required under this section will make it  
14 ineligible to receive state funds for public works projects for a period of one year  
15 from the date the infraction is discovered.

16       2. Any transient employer failing to conclusively show at any time that  
17 he has complied with the provisions of section 285.230, relating to the filing of a  
18 financial assurance instrument, shall, before beginning performance on any  
19 contract made with a private entity deposit with that private entity an amount  
20 equal to twenty percent of labor costs as specified in such contract which will be  
21 held in escrow by the private entity and payable only to the department of  
22 revenue, the division of employment security or the division of workers'  
23 compensation after the actual amount of tax liability is determined. In the event  
24 that labor costs are not separately stated in the contract, the amount to be held  
25 in escrow shall be ten percent of the contract amount. Any amount remaining in  
26 the escrow fund after payments are made shall be refunded to the  
27 contractor. Failure of a private entity to properly escrow funds required under  
28 this section shall make such entity liable for the full amount of the state  
29 withholding, workers' compensation, and employment security tax liability  
30 resulting from the transient employers' contract with that private entity.

31       3. In addition to any other penalty, interest, or remedy imposed by this  
32 section, any transient employer that fails to post a financial assurance  
33 instrument or escrow funds as provided for in this section shall be subject to a  
34 writ of attachment as provided for in chapter 521, RSMo, or any other injunctive  
35 relief provided for by law.

36       **4. Any owner, general contractor, or subcontractor who pays**  
37 **compensation to a nonresident subcontractor for work performed in**

38 Missouri shall deduct and withhold from such compensation as a  
39 prepayment of tax, an amount equal to two percent of the total  
40 compensation paid to the nonresident subcontractor to be placed in  
41 escrow and payable only to the department of revenue, the division of  
42 employment security or the division of workers' compensation after the  
43 actual amount of tax liability is determined.

290.307. 1. An employer shall not, in an attempt to avoid tax  
2 liability or reporting requirements for any employee, denote or treat  
3 such employee as an independent contractor, contract labor, or any  
4 other term or category implying the absence of an employment  
5 relationship.

6 2. Any employer who fails to classify an employee, misclassifies  
7 an employee as an independent contractor, or otherwise misclassifies  
8 the employee's employment status shall be fined two hundred dollars  
9 per occurrence.

10 3. An employer shall not terminate or in any manner  
11 discriminate against an employee because the employee has  
12 communicated to the employer the intent to seek reclassification as an  
13 employee instead of an independent contractor or has communicated  
14 the intent to file an action alleging a violation of this section.

15 4. For the purposes of this section an "independent contractor"  
16 shall be classified as an employee after no more than two thousand  
17 eighty hours of service for the same employer.

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