

FIRST REGULAR SESSION

# SENATE BILL NO. 178

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GREEN.

Pre-filed December 18, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0600S.011

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## AN ACT

To repeal section 285.300, RSMo, and to enact in lieu thereof two new sections relating to employee misclassification, with penalty provisions.

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

Section A. Section 285.300, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 285.300 and 285.303, to read as  
3 follows:

285.300. 1. Every employer doing business in the state shall require each  
2 newly hired employee to fill out a federal W-4 withholding form. A copy of each  
3 withholding form or an equivalent form containing data required by section  
4 285.304 which may be provided in an electronic or magnetic format shall be sent  
5 to the department of revenue by the employer within twenty days after the date  
6 the employer hires the employee or in the case of an employer transmitting a  
7 report magnetically or electronically, by two monthly transmissions, if necessary,  
8 not less than twelve days nor more than sixteen days apart. For purposes of this  
9 section, the date the employer hires the employee shall be the earlier of the date  
10 the employee signs the W-4 form or its equivalent, or the first date the employee  
11 reports to work, or performs labor or services. Such forms shall be forwarded by  
12 the department of revenue to the division of child support enforcement on a  
13 weekly basis and the information shall be entered into the database, to be known  
14 as the "State Directory of New Hires". The information reported shall be  
15 provided to the National Directory of New Hires established in 42 U.S.C. section  
16 653, other state agencies or contractors of the division as required or allowed by  
17 federal statutes or regulations. The division of employment security shall  
18 cross-check Missouri unemployment compensation recipients against any federal  
19 new hire database or any other database containing Missouri or other states'

20 wage information which is maintained by the federal government on a weekly  
21 basis. The division of employment security shall cross-check unemployment  
22 compensation applicants and recipients with Social Security Administration data  
23 maintained by the federal government at least weekly. Effective January 1, 2007,  
24 the division of employment security shall cross-check at least monthly  
25 unemployment compensation applicants and recipients with department of  
26 revenue drivers license databases.

27       **2. Every employer doing business in the state shall require each**  
28 **newly hired or rehired independent contractor to fill out a federal W-9**  
29 **form. The forms shall be compiled, distributed, and entered into the**  
30 **state directory of new hires in the same fashion as set forth in**  
31 **subsection 1 of this section.**

32       **3. Any employer that has employees who are employed in two or more**  
33 **states and transmits reports magnetically or electronically may comply with**  
34 **subsection 1 of this section by:**

35           (1) Designating one of the states in which the employer has employees as  
36 the designated state that such employer shall transmit the reports; and

37           (2) Notifying the secretary of Health and Human Services of such  
38 designation.

**285.303. 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 misclassifies an employee as an**  
7 **independent contractor or otherwise misclassifies the employee's**  
8 **employment status shall be fined an amount equal to the tax due on the**  
9 **employee's taxable wages or an amount equal to three times the tax due**  
10 **on the employee's taxable wages if it is shown that the employer's**  
11 **failure to report wages is due to bad faith.**

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