

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1801
97TH GENERAL ASSEMBLY

5741H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 143.041, 143.071, 143.191, 144.610, 285.230, 285.232, 285.233, and 285.234, RSMo, and to enact in lieu thereof twelve new sections relating to the facilitating business rapid response to state declared disasters act.

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

Section A. Sections 143.041, 143.071, 143.191, 144.610, 285.230, 285.232, 285.233, 2 and 285.234, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known 3 as sections 143.041, 143.071, 143.191, 144.610, 190.270, 190.275, 190.280, 190.285, 285.230, 4 285.232, 285.233, and 285.234, to read as follows:

143.041. **1.** A tax is hereby imposed for every taxable year on the income of every 2 nonresident individual which is derived from sources within this state. The tax shall be that 3 amount which bears the same ratio to the tax applicable to the individual if he would have been 4 a resident as (A) his Missouri nonresident adjusted gross income as determined under section 5 143.181 (Missouri adjusted gross income derived from sources within this state) bears to (B) his 6 Missouri adjusted gross income derived from all sources.

7 **2. The provisions of this section shall not apply to out-of-state businesses or out-of-**
8 **state employees operating under sections 190.270 to 190.285.**

143.071. **1.** For all tax years beginning before September 1, 1993, a tax is hereby 2 imposed upon the Missouri taxable income of corporations in an amount equal to five percent 3 of Missouri taxable income.

4 **2.** For all tax years beginning on or after September 1, 1993, a tax is hereby imposed 5 upon the Missouri taxable income of corporations in an amount equal to six and one-fourth 6 percent of Missouri taxable income.

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.

7 **3. The provisions of this section shall not apply to out-of-state businesses operating**
8 **under sections 190.270 to 190.285.**

143.191. 1. Every employer maintaining an office or transacting any business within this
2 state and making payment of any wages taxable under sections 143.011 to 143.998 to a resident
3 or nonresident individual shall deduct and withhold from such wages for each payroll period the
4 amount provided in subsection 3 of this section.

5 2. The term "wages" referred to in subsection 1 of this section means wages as defined
6 by section 3401(a) of the Internal Revenue Code of 1986, as amended. The term "employer"
7 means any person, firm, corporation, association, fiduciary of any kind, or other type of
8 organization for whom an individual performs service as an employee, except that if the person
9 or organization for whom the individual performs service does not have control of the payment
10 of compensation for such service, the term "employer" means the person having control of the
11 payment of the compensation. The term includes the United States, this state, other states, and
12 all agencies, instrumentalities, and subdivisions of any of them.

13 3. The method of determining the amount to be withheld shall be prescribed by
14 regulations of the director of revenue. The prescribed table, percentages, or other method shall
15 result, so far as practicable, in withholding from the employee's wages during each calendar year
16 an amount substantially equivalent to the tax reasonably estimated to be due from the employee
17 under sections 143.011 to 143.998 with respect to the amount of such wages included in his
18 Missouri adjusted gross income during the calendar year.

19 4. For purposes of this section an employee shall be entitled to the same number of
20 personal and dependency withholding exemptions as the number of exemptions to which he is
21 entitled for federal income tax withholding purposes. An employer may rely upon the number
22 of federal withholding exemptions claimed by the employee, except where the employee
23 provides the employer with a form claiming a different number of withholding exemptions in
24 this state.

25 5. The director of revenue may enter into agreements with the tax departments of other
26 states (which require income tax to be withheld from the payment of wages) so as to govern the
27 amounts to be withheld from the wages of residents of such states under this section. Such
28 agreements may provide for recognition of anticipated tax credits in determining the amounts
29 to be withheld and, under regulations prescribed by the director of revenue, may relieve
30 employers in this state from withholding income tax on wages paid to nonresident employees.
31 The agreements authorized by this subsection are subject to the condition that the tax department
32 of such other states grant similar treatment to residents of this state.

33 6. The director of revenue shall enter into agreements with the Secretary of the Treasury
34 of the United States or with the appropriate secretaries of the respective branches of the Armed

35 Forces of the United States for the withholding, as required by subsections 1 and 2 of this
36 section, of income taxes due the state of Missouri on wages or other payments for service in the
37 armed services of the United States or on payments received as retirement or retainer pay of any
38 member or former member of the Armed Forces entitled to such pay.

39 7. Subject to appropriations for the purpose of implementing this section, the director
40 of revenue shall comply with provisions of the laws of the United States as amended and the
41 regulations promulgated thereto in order that all residents of this state receiving monthly
42 retirement income as a civil service annuitant from the federal government taxable by this state
43 may have withheld monthly from any such moneys, whether pension, annuities or otherwise, an
44 amount for payment of state income taxes as required by state law, but such withholding shall
45 not be less than twenty-five dollars per quarter.

46 **8. The provisions of this section shall not apply to out-of-state businesses operating**
47 **under sections 190.270 to 190.285.**

144.610. 1. A tax is imposed for the privilege of storing, using or consuming within this
2 state any article of tangible personal property, excluding motor vehicles, trailers, motorcycles,
3 mopeds, motortricycles, boats, and outboard motors required to be titled under the laws of the
4 state of Missouri and subject to tax under subdivision (9) of subsection 1 of section 144.020,
5 purchased on or after the effective date of sections 144.600 to 144.745 in an amount equivalent
6 to the percentage imposed on the sales price in the sales tax law in section 144.020. This tax
7 does not apply with respect to the storage, use or consumption of any article of tangible personal
8 property purchased, produced or manufactured outside this state until the transportation of the
9 article has finally come to rest within this state or until the article has become commingled with
10 the general mass of property of this state.

11 2. Every person storing, using or consuming in this state tangible personal property
12 subject to the tax in subsection 1 of this section is liable for the tax imposed by this law, and the
13 liability shall not be extinguished until the tax is paid to this state, but a receipt from a vendor
14 authorized by the director of revenue under the rules and regulations that he prescribes to collect
15 the tax, given to the purchaser in accordance with the provisions of section 144.650, relieves the
16 purchaser from further liability for the tax to which receipt refers.

17 3. Because this section no longer imposes a Missouri use tax on the storage, use, or
18 consumption of motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and
19 outboard motors required to be titled under the laws of the state of Missouri, in that the state
20 sales tax is now imposed on the titling of such property, the local sales tax, rather than the local
21 use tax, applies.

22 **4. The provisions of this section shall not apply to out-of-state businesses or out-of-**
23 **state employees operating under sections 190.270 to 190.285.**

190.270. Sections 190.270 to 190.285 shall be known and may be cited as the
2 “Facilitating Business Rapid Response to State Declared Disasters Act”.

190.275. As used in sections 190.270 to 190.285, unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) “Declared state disaster” or “emergency”, a disaster or emergency event for
4 which a governor’s state of emergency proclamation has been issued or that the President
5 of the United States has declared to be a major disaster or emergency;

6 (2) “Disaster period”, the period of time starting with the governor’s proclamation
7 of a state of emergency or the declaration by the President of the United States of a major
8 disaster or emergency, whichever occurs first, and extending for a period of sixty calendar
9 days following the earlier of the governor’s proclamation or the President’s declaration;

10 (3) “Infrastructure”:

11 (a) Property and equipment owned or used by a public utility, communications
12 network, broadband and internet service provider, cable and video service provider, gas
13 distribution system, or water pipeline that provides service to more than one customer or
14 person, including related support facilities. Infrastructure includes real and personal
15 property such as buildings, offices, power lines, cable lines, poles, communication lines,
16 pipes, structures, and equipment; and

17 (b) Public roads and bridges;

18 (4) “Out-of-state business”, a business entity:

19 (a) That does not have a presence in the state;

20 (b) That does not conduct business in the state;

21 (c) That has no registrations, tax filings, or nexus in the state before the declared
22 disaster or emergency; and

23 (d) Whose assistance in repairing, renovating, installing, or building infrastructure
24 related to a declared state disaster or emergency is requested by the state, a county, city,
25 town, or other political subdivision of the state or a registered business that owns or uses
26 infrastructure as defined in this section.

27
28 Out-of-state business includes a business entity that is affiliated with a registered business
29 solely through common ownership as long as that business entity does not have any
30 registrations, tax filings, or nexus in the state before the declared state disaster or
31 emergency.

32
33 For purposes of this section, a prior registration as an out-of-state business for a declared
34 disaster or emergency shall not be considered a registration in this state.

35 (5) “Out-of-state employee”, an individual who does not work or reside in the state
36 except for disaster or emergency related work during a disaster period;

37 (6) “Registered business”, a business entity that is registered or licensed to do
38 business in the state before the declared state disaster or emergency.

190.280. 1. An out-of-state business that conducts operations within the state for
2 purposes of assisting in repairing, renovating, installing, or building infrastructure related
3 to a declared state disaster or emergency during the disaster period shall not be considered
4 to have established a level of presence that would subject the business or any of its out-of-
5 state employees to any of the following state or local employment, licensing, or registration
6 requirements:

7 (1) Except as set forth in section 190.285, registration with the secretary of state;

8 (2) Withholding or income tax registration, filing, or remitting requirements; and

9 (3) Use tax on equipment used or consumed during the disaster period if such
10 equipment does not remain in the state after the disaster period.

11 2. An out-of-state employee shall not be considered to have established residency
12 or a presence in the state that would require that person or that person's employer to file
13 and pay income taxes, to be subjected to tax withholdings, or to file and pay any other state
14 or local income or withholding tax or fee for work repairing, renovating, installing, or
15 building infrastructure during the disaster period.

16 3. After the conclusion of a disaster period, an out-of-state business or out-of-state
17 employee that remains in the state is fully subject to the state or local employment,
18 licensing, or registration requirements listed in this section or that were otherwise
19 suspended under sections 190.270 through 190.285 during the disaster period.

190.285. 1. An out-of-state business shall provide notification to the secretary of
2 state within ten days after entry to the state during a disaster period that the out-of-state
3 business is in the state for purposes of responding to the declared state disaster or
4 emergency. The out-of-state business shall provide to the secretary of state information
5 related to the out-of-state business including, but not limited to, the following:

6 (1) Name;

7 (2) State of domicile;

8 (3) Principal business address;

9 (4) Federal employer identification number;

10 (5) The date when the out-of-state business entered the state; and

11 (6) Contact information while the out-of-state business is in this state.

12 2. A registered business shall provide the notification required in subsection 1 of
13 this section for an affiliate of the registered business that enters the state as an out-of-state

14 **business. The notification under this subsection also must include contact information for**
15 **the registered business in the state.**

16 **3. An out-of-state business that remains in the state after a disaster period shall**
17 **notify the secretary of state within ten days after the end of the disaster period and shall**
18 **meet all registration, licensing, and filing requirements resulting from any business**
19 **presence or activity in the state.**

20 **4. The secretary of state shall provide information received from out-of-state**
21 **businesses or registered businesses under this section to the department of revenue within**
22 **thirty days after receipt of notification.**

285.230. 1. As used in this section, "transient employer" means an employer as defined
2 in sections 143.191, 287.030, and 288.032 making payment of wages taxable under chapters 143,
3 287, and 288 who is not domiciled in this state and who temporarily transacts any business
4 within the state, but shall not include any employer who is not subject to Missouri income tax
5 because of the provisions of 15 U.S.C. 381. The transaction of business shall be considered
6 temporary at any time it cannot be reasonably expected to continue for a period of twenty-four
7 consecutive months. Professional athletic teams and professional entertainers domiciled in a
8 state other than Missouri shall be deemed a "transient employer" for the purposes of this section,
9 unless the person or entity who pays compensation to the nonresident entertainer has fully
10 complied with the provisions of section 143.183 in which case the nonresident entertainer shall
11 not be considered a transient employer.

12 2. Employers meeting the following criteria shall not be required to file a financial
13 assurance instrument as required by this section:

14 (1) The principal place of business of the employer must be in a county of another state
15 which is contiguous to the state of Missouri; and

16 (2) The employer must have been under contract to perform work in Missouri for at least
17 sixty days cumulatively out of twelve months during each of the two calendar years immediately
18 preceding the employer's initial application for exemption from the provisions of this section;
19 and

20 (3) The employer must have in his possession a tax clearance from the department of
21 revenue and the division of employment security stating that the employer has faithfully
22 complied with the tax laws of this state during the period set out in subdivision (2) of this
23 subsection.

24 Within ninety days of August 13, 1988, such employers must obtain initial tax clearances in
25 accordance with subdivision (3) of this subsection. Any tax clearance issued under the
26 provisions of this section by the division of employment security shall be submitted to the
27 department of revenue. On or before January thirty-first of each year, except January thirty-first

28 following the year during which the employer first meets these criteria, the employer shall submit
29 application to the department of revenue and division of employment security for a renewed tax
30 clearance. Failure to submit such renewal applications or failure to comply with applicable
31 Missouri taxing and employment security laws during the period between annual renewal dates
32 or removal of the employer's principal place of business from a county in another state which is
33 contiguous to Missouri to a state other than Missouri shall immediately subject the employer to
34 all provisions of this section. An employer meeting the requirements of this subsection shall still
35 be subject to the provisions of subsection 5 of this section.

36 3. Every transient employer shall file with the director of revenue a financial assurance
37 instrument including, but not limited to, a cash bond, a surety bond, or an irrevocable letter of
38 credit as defined in section 400.5-103 issued by any state or federal financial institution. The
39 financial assurance instrument shall be in an amount not less than the average estimated quarterly
40 withholding tax liability of the applicant, but in no case less than five thousand dollars nor more
41 than twenty-five thousand dollars. Any corporate surety shall be licensed to do such business
42 in this state and approved by the director of revenue to act as a surety. The transient employer
43 shall be the principal obligor and the state of Missouri shall be the obligee. The financial
44 assurance instrument shall be conditioned upon the prompt filing of true reports and the payment
45 by such employer to the director of revenue of any and all withholding taxes which are now or
46 which hereafter may be levied or imposed by the state of Missouri, upon the employer, together
47 with any and all penalties and interest thereon, and generally upon the faithful compliance with
48 the provisions of chapters 143, 287, and 288.

49 4. Any transient employer who is already otherwise required to file a financial assurance
50 instrument as a condition of any contract, provided said financial assurance instrument
51 guarantees payment of all applicable state taxes and all withholding taxes levied or imposed by
52 the state and provided that such financial assurance instrument is delivered by certified mail to
53 the department of revenue by the applicable awarding entity at least fourteen days before the
54 execution of the contract for the performance of work, may use the same financial assurance
55 instrument to comply with the provisions of this section. Before such financial assurance
56 instrument is approved by the awarding entity, the director of revenue shall be satisfied that such
57 financial assurance instrument is sufficient to cover all taxes imposed by this state and the
58 director shall so notify the awarding entity of the decision within the fourteen days prior to the
59 execution of the contract. Failure to do so by the director shall waive any right to disapprove
60 such financial assurance instrument. Before a financial assurance instrument is released by the
61 entity awarding the contract, a tax clearance shall be obtained from the director of revenue that
62 such transient employer has faithfully complied with all the tax laws of this state.

63 5. Every transient employer shall certify to the director of revenue that such employer
64 has sufficient workers' compensation insurance either through a self-insurance program or a
65 policy of workers' compensation insurance issued by an approved workers' compensation carrier.
66 The self-insurance program shall be approved by the division of workers' compensation pursuant
67 to section 287.280. The insurance policy shall be in a contract form approved by the department
68 of insurance, financial institutions and professional registration.

69 6. In the event that liability upon the financial assurance instrument thus filed by the
70 transient employer shall be discharged or reduced, whether by judgment rendered, payment made
71 or otherwise, or if in the opinion of the director of revenue any surety on a bond theretofore given
72 or financial institution shall have become unsatisfactory or unacceptable, then the director of
73 revenue may require the employer to file a new financial assurance instrument in the same form
74 and amount. If such new financial assurance instrument shall be furnished by such employer as
75 above provided, the director of revenue shall upon satisfaction of any liability that has accrued,
76 release the surety on the old bond or financial institution issuing the irrevocable letter of credit.

77 7. Any surety on any bond or financial institution issuing an irrevocable letter of credit
78 furnished by any transient employer as provided in this section shall be released and discharged
79 from any and all liability to the state of Missouri accruing on such bond or irrevocable letter of
80 credit after the expiration of sixty days from the date upon which such surety or financial
81 institution shall have lodged with the director of revenue a written request to be released and
82 discharged; but the request shall not operate to relieve, release or discharge such surety or
83 financial institution from any liability already accrued or which shall accrue during and before
84 the expiration of said sixty-day period. The director of revenue shall promptly on receipt of
85 notice of such request notify the employer who furnished such bond or irrevocable letter of credit
86 and such employer shall on or before the expiration of such sixty-day period file with the director
87 of revenue a new financial assurance instrument satisfactory to the director of revenue in the
88 amount and form provided in this section.

89 8. Notwithstanding the limitation as to the amount of any financial assurance instrument
90 fixed by this section, if a transient employer becomes delinquent in the payment of any tax or
91 tenders a check in payment of tax which check is returned unpaid because of insufficient funds,
92 the director may demand an additional instrument of such employer in an amount necessary, in
93 the judgment of the director, to protect the revenue of the state. The penal sum of the additional
94 instrument and the instrument furnished under the provisions of the law requiring such
95 instrument may not exceed two quarters' estimated tax liability.

96 9. For any period when a transient employer fails to meet the requirements of this
97 section, there shall be added to any deficiency assessed against a transient employer, in addition

98 to any other addition, interest, and penalties, an amount equal to twenty-five percent of the
99 deficiency.

100 10. A taxpayer commits the crime of failure to file a financial assurance instrument if
101 he knowingly fails to comply with the provisions of this section.

102 11. Failure to file a financial assurance instrument is a class A misdemeanor. Pursuant
103 to section 560.021, a corporation found guilty of failing to file a financial assurance instrument
104 may be fined up to five thousand dollars or any higher amount not exceeding twice the amount
105 the employer profited from the commission of the offense.

106 12. Failing to register with the department of revenue and execute the financial assurance
107 instrument herein provided, prior to beginning the performance of any contract, shall prohibit
108 the employer from performing on such contract until he complies with such requirements.

109 13. Each employer shall keep full and accurate records clearly indicating the names,
110 occupations, and crafts, if applicable, of every person employed by him together with an accurate
111 record of the number of hours worked by each employee and the actual wages paid. The payroll
112 records required to be so kept shall be open to inspection by any authorized representative of the
113 department of revenue at any reasonable time and as often as may be necessary and such records
114 shall not be destroyed or removed from the state for a period of one year following the
115 completion of the contract in connection with which the records are made.

116 14. The entering into of any contract for the performance of work in the state of Missouri
117 by any such employer shall be deemed to constitute an appointment of the secretary of state as
118 registered agent of such employer for purposes of accepting service of any process, or of any
119 notice or demand required or permitted by law. The service of any such process, notice or
120 demand, when served on the secretary of state shall have the same legal force and validity as if
121 served upon the employer personally within the state.

122 15. In addition, any employer who fails to file a financial assurance instrument as
123 required by this section shall be prohibited from contracting for or performing labor on any
124 public works project in this state for a period of one year.

125 16. Whenever a transient employer ceases to engage in activity within the state it shall
126 be the duty of such transient employer to notify the director of revenue in writing at least ten days
127 prior to the time the discontinuance takes effect.

128 **17. The provisions of this section shall not apply to out-of-state businesses operating**
129 **under sections 190.270 to 190.285.**

285.232. 1. Subject to the provisions of section 285.230, any county, city, town, village
2 or any other political subdivision which requires a building permit for a person to perform certain
3 construction projects shall require a transient employer to show proof that the employer has been
4 issued a tax clearance and has filed a financial assurance instrument as required by section

5 285.230 before such entity issues a building permit to the transient employer. If any transient
6 employer obtains a building permit without providing such proof, provides a fraudulently
7 obtained tax clearance or a fraudulent financial assurance instrument or through any
8 misrepresentation or any other fraudulent act or in any way violates the provisions of sections
9 285.230 to 285.234, the Missouri department of revenue shall request a temporary restraining
10 order or seek injunctive relief to immediately prohibit further performance of work by the
11 transient employer on such contract or project. The court may direct that any payments due such
12 transient employer be equitably distributed in satisfaction of the transient employer's obligations
13 pursuant to sections 285.230 to 285.234. Upon issuance of such order by a court of competent
14 jurisdiction, the person for whom the work is being performed may engage another contractor
15 as provided by law or any provision of contract and the person shall not be deemed to be in
16 violation of the contract with such transient employer removed by the court. Nothing in this
17 section shall be construed to create or constitute a liability to or a cause of action against a city
18 or county in regard to the issuance of any license pursuant to this section.

19 2. Any contractor for private or public construction work in this state which contracts
20 with or otherwise engages a subcontractor, which is deemed a transient employer as defined in
21 section 285.230, to perform any portion of such work, shall require such subcontractor to show
22 proof of having filed a financial assurance instrument with the director of revenue as required
23 by section 285.230 and to show proof that the subcontractor holds a current valid certificate of
24 insurance for workers' compensation coverage in this state, prior to the subcontractor performing
25 any work on the project. If the subcontractor is self-insured for purposes of workers'
26 compensation, the contractor shall require proof that such self-insurance by the subcontractor has
27 been approved by the division of workers' compensation. The contractor shall not allow the
28 subcontractor to perform on such contract until proof of compliance as required by this section
29 has been provided to the contractor. If a subcontractor which is deemed to be a transient
30 employer has previously submitted proof of compliance as required by this section to a state
31 agency or political subdivision for which the contract is being performed as a condition of being
32 qualified to perform work for such agency or political subdivision, the general contractor shall
33 not be required to obtain the proofs required by this section. If at any time prior to final payment
34 to a subcontractor for work performed on a project, a contractor is notified in writing by the
35 director of revenue or the director of the division of workers' compensation that a subcontractor
36 is in violation of sections 285.230 to 285.234, the contractor shall withhold all or part of any
37 payment to the subcontractor under the contract for payment in satisfaction of the subcontractor's
38 obligations as a transient employer if so directed by the director of revenue or the director of the
39 division of workers' compensation. Any contractor withholding payment and paying such funds
40 in satisfaction of the subcontractor's obligations as a transient employer if so directed by the

41 director of revenue or the director of the division of workers' compensation. Any contractor
42 withholding payment and paying such funds in satisfaction of the subcontractor's obligations as
43 a transient employer shall be deemed in compliance with the contract with the subcontractor to
44 the extent of the amount paid to fulfill such obligation and with the laws of this state regarding
45 timely payment under construction contracts and shall not be subject to any civil or criminal
46 penalty for withholding such payment.

47 3. Notwithstanding the provision of section 32.057, the Missouri department of revenue
48 shall at least quarterly submit for publication in the Missouri Register a list of construction
49 contractors performing work on construction projects in Missouri who are known by the
50 department to be deemed transient employers pursuant to section 285.230. The department shall
51 also update such list monthly and make such list available upon request without cost to any
52 person.

53 **4. The provisions of this section shall not apply to out-of-state businesses operating**
54 **under sections 190.270 to 190.285.**

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

14 2. Any transient employer failing to conclusively show at any time that he has complied
15 with the provisions of section 285.230, relating to the filing of a financial assurance instrument,
16 shall, before beginning performance on any contract made with a private entity deposit with that
17 private entity an amount equal to twenty percent of labor costs as specified in such contract
18 which will be held in escrow by the private entity and payable only to the department of revenue,
19 the division of employment security or the division of workers' compensation after the actual
20 amount of tax liability is determined. In the event that labor costs are not separately stated in the
21 contract, the amount to be held in escrow shall be ten percent of the contract amount. Any
22 amount remaining in the escrow fund after payments are made shall be refunded to the

23 contractor. Failure of a private entity to properly escrow funds required under this section shall
24 make such entity liable for the full amount of the state withholding, workers' compensation, and
25 employment security tax liability resulting from the transient employers' contract with that
26 private entity.

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

31 **4. The provisions of this section shall not apply to out-of-state businesses or out-of-**
32 **state employees operating under sections 190.270 to 190.285.**

285.234. 1. Every transient employer, as defined in section 285.230 shall post in a
2 prominent and easily accessible place at the work site a clearly legible copy of the following:

3 (1) The notice of registration for employer withholding issued to such transient employer
4 by the director of revenue;

5 (2) Proof of coverage for workers' compensation insurance or self-insurance signed by
6 the transient employer and verified by the department of revenue through the records of the
7 division of workers' compensation; and

8 (3) The notice of registration for unemployment insurance issued to such transient
9 employer by the division of employment security.

10 2. Any transient employer failing to comply with the provisions of this section shall be
11 liable for a penalty of five hundred dollars per day until the notices required by this section are
12 posted as provided by this section.

13 **3. The provisions of this section shall not apply to out-of-state businesses operating**
14 **under sections 190.270 to 190.285.**

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