

FIRST REGULAR SESSION

HOUSE BILL NO. 1331

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAULS.

1526H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to freelance workers, with penalty provisions.

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

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.560, to read as follows:

285.560. 1. This act shall be known and may be cited as the "Freelance Isn't Free Act".

2. As used in this section, the following terms mean:

(1) "Construction contractor", any person, sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity who by itself or through others offers to undertake, or holds itself out as being able to undertake, or does undertake a construction project;

(2) "Construction project", the provision of any labor or services and the use of any materials or equipment in order to alter, build, excavate, add to, subtract from, improve, repair, maintain, renovate, move, wreck, or demolish any bridge, building, highway, road, railroad, land, tunnel, sewer, drainage, or other structure, project, development, or improvement, or the performance of any part thereof, including the erection of scaffolding or other structures or works in connection therewith;

(3) "Department", the department of labor and industrial relations;

(4) "Freelance worker", any natural person or organization composed of no more than one natural person, whether incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in

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.

18 exchange for an amount equal to or greater than two hundred fifty dollars, either by
19 itself or when aggregated with all contracts for services between the same hiring party
20 and freelance worker during the immediately preceding one hundred twenty days, but
21 does not include any person:

22 (a) Who, under the contract at issue, is a sales representative as defined under
23 section 407.911;

24 (b) Engaged in the practice of law under the contract at issue; who is a member
25 in good standing of the bar of the highest court of any state, possession, territory,
26 commonwealth, or the District of Columbia; and who is not under any order of a court
27 suspending, enjoining, restraining, disbaring, or otherwise restricting such person in
28 the practices of law;

29 (c) Who is a licensed medical professional; or

30 (d) Who is a construction contractor;

31 (5) "Hiring party", any person who retains a freelance worker to provide any
32 service, other than:

33 (a) The United States government;

34 (b) The state of Missouri, including any office, department, agency, authority, or
35 other body of the state, including the legislature and the judiciary;

36 (c) A municipality, including any office, department, agency, or other body of a
37 municipality; or

38 (d) Any foreign government.

39 3. (1) Except as otherwise provided by law, the contracted compensation shall be
40 paid to a freelance worker either:

41 (a) On or before the date such compensation is due under the terms of the
42 contract; or

43 (b) If the contract does not specify when the hiring party shall pay the
44 contracted compensation or the mechanism by which such date shall be determined, not
45 later than thirty days after the completion of the freelance worker's services under the
46 contract.

47 (2) Once a freelance worker has commenced performance of the services under
48 the contract, the hiring party shall not require as a condition of timely payment that the
49 freelance worker accept less compensation than the amount of the contracted
50 compensation.

51 4. (1) When a hiring party retains the services of a freelance worker, as such
52 terms are defined in this section, the contract between such party and worker shall be
53 reduced to writing. The hiring party shall furnish a copy of such written contract,

54 either physically or electronically, to the freelance worker and each party to the written
55 contract shall retain a copy thereof.

56 (2) The written contract shall include, at a minimum, the following information:

57 (a) The name and mailing address of both the hiring party and the freelance
58 worker;

59 (b) An itemization of all services to be provided by the freelance worker, the
60 value of the services to be provided pursuant to the contract, and the rate and method of
61 compensation;

62 (c) The date on which the hiring party shall pay the contracted compensation or
63 the mechanism by which such date shall be determined; and

64 (d) The date by which a freelance worker shall submit a list of services rendered
65 under such contract to the hiring party in order to meet any internal processing
66 deadlines of such hiring party for the purposes of compensation being timely rendered
67 by the agreed-upon date as stipulated under paragraph (c) of this subdivision.

68 (3) The department may by rule require additional terms to ensure that the
69 freelance worker and the hiring party understand their obligations under the contract.

70 (4) Such hiring party shall be required to keep such contract for a period of no
71 less than six years and shall make such contract available to the department upon
72 request. The failure of a hiring party to produce such contract, upon request of the
73 department, shall give rise to a presumption that the terms that the freelance worker
74 has presented are the agreed-upon terms.

75 (5) The department shall make available model contracts on the department's
76 website for use by the general public at no cost. Such model contracts shall be made
77 available in English and Spanish.

78 5. No hiring party shall threaten, intimidate, discipline, harass, deny a work
79 opportunity to, or discriminate against a freelance worker, or take any other action that
80 penalizes a freelance worker for, or is reasonably likely to deter a freelance worker
81 from, exercising or attempting to exercise any right guaranteed under this section, or
82 from obtaining any future work opportunity because the freelance worker has done so.

83 6. (1) Any freelance worker or his or her authorized representative may file a
84 complaint with the department regarding a violation of this section for an investigation
85 of such complaint and statement setting the appropriate remedy, if any. The
86 department shall keep the names of freelance workers who are the subject of an
87 investigation confidential until such time that disclosure is necessary for resolution of an
88 investigation or a complaint. Failure of a hiring party to keep adequate records or
89 provide a written contract as required under this section, in addition to exposing such
90 hiring party to penalties authorized under this section, shall not operate as a bar to the

91 **filing of a complaint by a freelance worker. In such a case the hiring party in violation**
92 **shall bear the burden of proving that the freelance worker who filed the complaint was**
93 **paid in accordance with this section.**

94 **(2) Each freelance worker who files a complaint regarding a violation of this**
95 **section or a rule or regulation promulgated hereunder shall be provided with a written**
96 **description of the anticipated processing of the complaint, including investigation, case**
97 **conference, potential civil and criminal penalties, and collection procedures. Each**
98 **freelance worker and his or her authorized representative shall be notified in writing of:**

99 **(a) Any case conference before it is held and given the opportunity to attend; and**

100 **(b) Any award and collection of civil penalties.**

101 **7. The department shall have the following duties, powers, and authority:**

102 **(1) To investigate and attempt to equitably adjust controversies between**
103 **freelance workers and hiring parties relating to this section and is authorized to make**
104 **rules or regulations further establishing the complaint process, investigation, case**
105 **conference, penalties, collection procedures, and other necessary procedures to ensure**
106 **compliance with this section;**

107 **(2) To take assignments of claims for wages under this section from freelance**
108 **workers or third parties in trust for such freelance workers. The attorney general, on**
109 **behalf of the department, is authorized to sue hiring parties on wage claims thus**
110 **assigned, subject to the provisions of existing law applying to actions by freelance**
111 **workers for collection of wages. The department or the attorney general may join in a**
112 **single action any number of wage claims against the same hiring party;**

113 **(3) (a) The department is hereby authorized and empowered to enter into**
114 **reciprocal agreements with the corresponding labor department or agency of any other**
115 **state or with the person, board, officer, or commission authorized to act on behalf of**
116 **such department or agency for the collection in such other states of claims and**
117 **judgments for wages based upon claims assigned to the department;**

118 **(b) The department, through the attorney general as its representative, may, to**
119 **the extent provided for by any reciprocal agreement entered into by law or with any**
120 **agency of another state as herein provided, maintain actions in the courts of such other**
121 **state for the collection of claims and judgments for wages and may assign such claims**
122 **and judgments to the corresponding department or agency of such other state for**
123 **collection to the extent that such an assignment may be permitted or provided for by the**
124 **law of such state or by reciprocal agreement;**

125 **(c) The department, through the attorney general as its representative, may,**
126 **upon the written consent of the corresponding department or agency of any other state**
127 **or of any person, board, officer, or commission of such state authorized to act on behalf**

128 of such department or corresponding agency, maintain actions in the courts of this state
129 upon assigned claims and judgments for wages arising in such other state in the same
130 manner and to the same extent that such actions by the department are authorized when
131 arising in this state. However, such actions shall be maintained only in cases where such
132 other state by law or reciprocal agreement extends a like comity to cases arising in this
133 state; and

134 (4) Nothing in this section shall be construed as requiring the department in
135 every instance to investigate and attempt to adjust controversies or to take assignments
136 of wage claims, but it shall be deemed vested with discretion in such matters.

137 8. (1) (a) A freelance worker alleging a violation of this section may bring an
138 action in any court of competent jurisdiction for damages.

139 (b) Any action alleging a violation of subsection 4 of this section shall be brought
140 within two years after the acts alleged to have violated this section occurred.

141 (c) Any action alleging a violation of subsection 3 of this section or subsection 5
142 of this section shall be brought within six years after the acts alleged to have violated this
143 section occurred.

144 (d) Within ten days after having commenced a civil action pursuant to this
145 subsection, a plaintiff shall serve a copy of the complaint upon an authorized
146 representative of the department. Failure to so serve a complaint shall not adversely
147 affect any plaintiff's cause of action.

148 (e) A plaintiff who solely alleges a violation of subsection 4 of this section shall
149 prove that such plaintiff requested a written contract before the contracted work began.

150 (2) (a) A plaintiff who prevails on a claim alleging a violation of subsection 3 of
151 this section shall be awarded damages as described in this subsection and an award of
152 reasonable attorney's fees and costs.

153 (b) A plaintiff who prevails on a claim alleging a violation of subsection 4 of this
154 section shall be awarded statutory damages of two hundred fifty dollars.

155 (c) In addition to other damages awarded under this section, a plaintiff who
156 prevails on a claim alleging a violation of subsection 3 of this section is entitled to an
157 award of double damages, injunctive relief, and other such remedies as may be
158 appropriate.

159 (d) In addition to any other damages awarded under this section, a plaintiff who
160 prevails on a claim alleging a violation of subsection 5 of this section is entitled to
161 statutory damages equal to the value of the underlying contract for each violation
162 arising under such subsection.

163 **9. (1) (a) If reasonable cause exists to believe that a hiring party is engaged in a**
164 **pattern or practice of violations of this section, the attorney general may commence a**
165 **civil action on behalf of the state in a court of competent jurisdiction.**

166 **(b) An action under paragraph (a) of this subdivision shall be commenced by**
167 **filing a complaint setting forth facts relating to such pattern or practice and requesting**
168 **relief, which may include injunctive relief, civil penalties, and any other appropriate**
169 **relief.**

170 **(c) Nothing in this subdivision prohibits:**

171 **a. A person alleging a violation of this section from filing a civil action based on**
172 **the same facts as a civil action commenced by the attorney general under this section; or**

173 **b. The department from sending a notice of complaint, unless otherwise barred**
174 **from doing so.**

175 **(2) In any civil action commenced under this subsection, the trier of fact may**
176 **impose a civil penalty of not more than twenty-five thousand dollars for a finding that a**
177 **hiring party has engaged in a pattern or practice of violations of this section, in addition**
178 **to any other remedies provided by law. Any civil penalty so recovered shall be paid into**
179 **the general revenue fund.**

180 **10. (1) Except as otherwise provided by law, any provision of a contract**
181 **purporting to waive rights under this section is void as against public policy.**

182 **(2) The provisions of this section supplement and do not diminish or replace any**
183 **other basis of liability or requirement established by statute or common law.**

184 **(3) Failure to comply with the provisions of this section shall not render any**
185 **contract between a hiring party and a freelance worker void or voidable or otherwise**
186 **impair any obligation, claim, or right related to such contract or constitute a defense to**
187 **any action or proceeding to enforce, or for breach of, such contract.**

188 **(4) No provision of this section relating to freelance workers shall be construed**
189 **as providing a determination about the legal classification of any such worker as an**
190 **employee or independent contractor, as defined by law.**

191 **11. The department shall conduct a public awareness outreach campaign, which**
192 **shall include making information available on its website, otherwise informing hiring**
193 **parties of the provisions of this section, and establishing a means for assistance by a**
194 **natural person through phone and email.**

195 **12. (1) No later than six months after the department sends to a freelance**
196 **worker either a hiring party's response and accompanying materials or a notice of**
197 **nonresponse, the department shall send the freelance worker a survey requesting**
198 **additional information about the resolution of the freelance worker's claims. Such**
199 **survey shall ask whether the freelance worker pursued any such claims in court or**

200 through an alternative dispute resolution process and whether the hiring party
201 ultimately paid any or all of the compensation the freelance worker alleged was due or if
202 the matter was resolved in a different manner. Such survey shall state clearly that
203 responding to the survey is voluntary.

204 (2) The department shall collect and track information about complaints
205 alleging violations of this section. The information collected shall include, at minimum:

206 (a) The identity of the hiring party alleged to have violated this section;

207 (b) The freelance worker's occupation;

208 (c) The subsection or subsections of this section that were alleged to have been
209 violated;

210 (d) The value of the contract;

211 (e) The response or nonresponse from the hiring party; and

212 (f) Information from a completed survey identified in subdivision (1) of this
213 subsection.

214 (3) One year after the effective date of this section, and every fifth year
215 thereafter, by November first, the department shall submit to the legislature and publish
216 on its website a report regarding the effectiveness of the applicable provisions of this
217 section at improving freelance contracting and payment practices. Such report shall
218 include, at a minimum:

219 (a) The number of complaints the department has received under such
220 provisions;

221 (b) The value of the contracts disaggregated into ranges of five hundred dollars
222 and by subsections of this act alleged to have been violated;

223 (c) The numbers of responses and nonresponses received by the department
224 disaggregated by contract value into ranges of five hundred dollars and by subsections
225 of this act alleged to have been violated;

226 (d) The proportion of surveys received from freelance workers that indicate that
227 the freelance worker pursued his or her claims in court and the proportion of surveys
228 received from freelance workers that indicate that the freelance worker pursued his or
229 her claims through an alternative dispute resolution process and a summary of the
230 outcomes of such cases; and

231 (e) Legislative recommendations, including consideration of whether certain
232 occupations should be exempted from the scope of the definition of "freelance worker"
233 in this section.

234 13. The department may promulgate all necessary rules and regulations for the
235 administration of this section. Any rule or portion of a rule, as that term is defined in
236 section 536.010, that is created under the authority delegated in this section shall

237 **become effective only if it complies with and is subject to all of the provisions of chapter**
238 **536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable**
239 **and if any of the powers vested with the general assembly pursuant to chapter 536 to**
240 **review, to delay the effective date, or to disapprove and annul a rule are subsequently**
241 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
242 **adopted after August 28, 2023, shall be invalid and void.**

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