

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1644

103RD GENERAL ASSEMBLY

4247S.02C

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 290.500, RSMo, and to enact in lieu thereof two new sections relating to the employer-employee relationship.

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

Section A. Section 290.500, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 285.075 and 290.500, to read as follows:

**285.075. 1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee or a franchisor, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose, unless the franchisor exercises direct and immediate control over the hiring, termination, discipline, and direction of the franchisee's employees.**

**2. For purposes of this section, the terms "franchisee" and "franchisor" shall have the same meaning as in 16 CFR 436.1.**

290.500. As used in sections 290.500 to 290.530, the following words and phrases mean:

(1) "Agriculture", farming and all its branches including, but not limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodities, the raising

7 of livestock, fish and other marine life, bees, fur-bearing  
8 animals or poultry and any practices performed by a farmer  
9 or on a farm as an incident to or in conjunction with  
10 farming operations, including preparation for market,  
11 delivery to storage or to market or to carriers for  
12 transportation to market;

13 (2) "Director", the director of the department of  
14 labor and industrial relations or his authorized  
15 representative;

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

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

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

25 (c) Any individual standing in loco parentis to foster  
26 children in their care;

27 (d) Any individual employed for less than four months  
28 in any year in a resident or day camp for children or youth,  
29 or any individual employed by an educational conference  
30 center operated by an educational, charitable or not-for-  
31 profit organization;

32 (e) Any individual engaged in the activities of an  
33 educational organization where employment by the  
34 organization is in lieu of the requirement that the  
35 individual pay the cost of tuition, housing or other  
36 educational fees of the organization or where earnings of  
37 the individual employed by the organization are credited

38 toward the payment of the cost of tuition, housing or other  
39 educational fees of the organization;

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

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

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

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

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

54 (k) Any individual whose earnings are derived in whole  
55 or in part from sales commissions and whose hours and places  
56 of employment are not substantially controlled by the  
57 employer;

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

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

63 (n) Any individual who is an offender, as defined in  
64 section 217.010, who is incarcerated in any correctional  
65 facility operated by the department of corrections,  
66 including offenders who provide labor or services on the  
67 grounds of such correctional facility pursuant to section  
68 217.550;

69 (o) Any individual described by the provisions of  
70 section 29 U.S.C. 213(a) (8);

71 (p) **Any individual who has entered into a contract to**  
72 **play baseball at the minor league level and who is**  
73 **compensated pursuant to the terms of a collective bargaining**  
74 **agreement that expressly provides for wages and working**  
75 **conditions;**

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

79 (5) "Learner and apprentice", any individual under 20  
80 years of age who has not completed the required training for  
81 a particular job. In no event shall the individual be  
82 deemed a learner or apprentice in the occupation after three  
83 months of training except where the director finds, after  
84 investigation, that for the particular occupation a minimum  
85 of proficiency cannot be acquired in three months. In no  
86 case shall a person be declared to be a learner or  
87 apprentice after six months of training for a particular  
88 employer or job. Employees of an amusement or recreation  
89 business that meets the criteria set out in 29 U.S.C. §  
90 213(a) (3) may be deemed a learner or apprentice for ninety  
91 working days. No individual shall be deemed a learner or  
92 apprentice solely for the purpose of evading the provisions  
93 of sections 290.500 to 290.530;

94 (6) "Occupation", any occupation, service, trade,  
95 business, industry, or branch or group of industries or  
96 employment or class of employment in which individuals are  
97 gainfully employed;

98 (7) "Wage", compensation due to an employee by reason  
99 of his employment, payable in legal tender of the United

100 States or checks on banks convertible into cash on demand at  
101 full face value;

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

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

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