

SENATE BILL NO. 863

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

4138S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 285.500, 287.020, 288.034, and 387.414, RSMo, and to enact in lieu thereof five new sections relating to the classification of workers.

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

Section A. Sections 285.500, 287.020, 288.034, and 2
387.414, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 285.500, 285.517, 287.020,
4 288.034, and 387.414, to read as follows:

285.500. For the purposes of sections 285.500 to
2 **[285.515] 285.517** the following terms mean:

3 (1) "Employee", any individual who performs services
4 for an employer that would indicate an employer-employee
5 relationship **[in satisfaction of the factors in IRS Rev.**
6 **Rule 87-41, 1987-1 C.B.296.] unless such individual is**
7 **presumed as an independent contractor under section 285.517;**

8 (2) "Employer", any individual, organization,
9 partnership, political subdivision, corporation, or other
10 legal entity which has or had in the entity's employ five or
11 more individuals performing public works as defined in
12 section 290.210;

13 (3) "Knowingly", a person acts knowingly or with
14 knowledge:

15 (a) With respect to the person's conduct or to
16 attendant circumstances when the person is aware of the

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 nature of the person's conduct or that those circumstances
18 exist; or

19 (b) With respect to a result of the person's conduct
20 when the person is aware that the person's conduct is
21 practically certain to cause that result.

285.517. 1. For purposes of this section, any person
2 is conclusively presumed to be an independent contractor who
3 performs work for any employer and satisfies all of the
4 following criteria:

5 (1) The person has signed a written contract with the
6 employer that states the employer's intent to retain the
7 services of the person as an independent contractor and the
8 person is required by the contract to hold any state or
9 local business license and to maintain any occupational
10 license necessary to perform such services; and

11 (2) (a) The person has filed, intends to file, or is
12 contractually required to file, in regard to the fees earned
13 from work, an income tax return with the Internal Revenue
14 Service for a business or for earnings from self-employment;
15 or

16 (b) The person provides his or her services through a
17 business entity, including but not limited to, a
18 partnership, limited liability company or corporation, or
19 through a sole proprietorship; and

20 (3) The person has the right to control the manner and
21 means by which the work is to be accomplished, even though
22 he or she may not have control over the final result of the
23 work, provided that the employer may provide orientation,
24 information, guidance, or suggestions about the employer's
25 products, business, services, customers and operating
26 systems, and training otherwise provided by law; and

27 (4) The person satisfies three or more of the
28 following:

29 (a) The person controls the amount of time personally
30 spent providing services, provided that an agreement may be
31 made with the employer relating to the final completion or
32 final delivery time or schedule, range of hours, or the time
33 entertainment is to be presented if the work contracted for
34 is entertainment;

35 (b) The person has control over where the services are
36 performed, except in the case of services that can only be
37 performed at certain locations;

38 (c) The person is not required to work exclusively
39 with one employer, unless:

40 a. A law, regulation, or ordinance prohibits the
41 person from providing services to more than one employer; or

42 b. A license or permit that the person is required to
43 maintain in order to perform the work limits the person to
44 working for only one employer at a time and requires
45 identification of the employer;

46 (d) The person is free to exercise independent
47 initiative in soliciting others to purchase his or her
48 services;

49 (e) The person is free to hire employees or to
50 contract with assistants, helpers, or substitutes to perform
51 all or some of the work;

52 (f) The person cannot be required to perform
53 additional services without a new or modified contract;

54 (g) The person obtains a license or other permission
55 from the employer to utilize any workspace of the employer
56 in order to perform the work for which the person was
57 engaged;

58 (h) The employer has been subject to an employment
59 audit by the Internal Revenue Service and the Internal
60 Revenue Service has not reclassified the person to be an
61 employee or has not reclassified the category of workers to
62 be employees; or

63 (i) The person is responsible for maintaining and
64 bearing the costs of any required business licenses,
65 insurance, certifications, or permits required to perform
66 services.

67 2. (1) A person who is not conclusively presumed to
68 be an independent contractor for failure to satisfy three or
69 more of the criteria set forth in subdivision (4) of
70 subsection 1 of this section shall not be presumed to be an
71 employee.

72 (2) For purposes of chapters 287 and 288, all persons
73 who do not otherwise satisfy the criteria set forth in this
74 section shall be classified as an employee or an independent
75 contractor using the test set forth in the Internal Revenue
76 Service Revenue Ruling 87-41, 1987-1 C.B. 296.

77 (3) For purposes of this section, any person is
78 conclusively presumed to be an independent contractor who
79 satisfies the definition of a direct seller under 26 U.S.C.
80 Section 3508(b)(2).

81 3. No employer shall be required to classify a person
82 who is considered an independent contractor under subsection
83 1 of this section as an employee, provided that the employer
84 may choose to hire and classify such person as an employee
85 at any time.

86 4. This section shall not apply to:

87 (1) Service consisting of prearranged passenger
88 transport provided by transportation network drivers through
89 a digital network offered by a transportation network

90 company, as defined in sections 387.400 to 387.440. The
91 independent contractor status of transportation network
92 drivers shall be governed exclusively by section 387.414;

93 (2) Entities described in section 501(c)(3) of the
94 Internal Revenue Code of 1986, as amended;

95 (3) State or local government entities; or

96 (4) Federally recognized Indian tribes.

97 5. This section shall not overrule any exemptions from
98 the definition of employee or employment found in other
99 sections of state law.

100 6. No political subdivision of the state shall enact,
101 establish, mandate, or otherwise implement any law,
102 ordinance, or regulation in conflict with the provisions of
103 this section.

287.020. 1. The word "employee" as used in this
2 chapter shall be construed to mean every person in the
3 service of any employer, as defined in this chapter, under
4 any contract of hire, express or implied, oral or written,
5 or under any appointment or election, including executive
6 officers of corporations. Except as otherwise provided in
7 section 287.200, any reference to any employee who has been
8 injured shall, when the employee is dead, also include his
9 or her dependents, and other persons to whom compensation
10 may be payable. The word "employee" shall also include all
11 minors who work for an employer, whether or not such minors
12 are employed in violation of law, and all such minors are
13 hereby made of full age for all purposes under, in
14 connection with, or arising out of this chapter. The word
15 "employee" shall not include an individual who is the owner,
16 as defined in section 301.010, and operator of a motor
17 vehicle which is leased or contracted with a driver to a for-
18 hire motor carrier operating within a commercial zone as

19 defined in section 390.020 or 390.041, or operating under a
20 certificate issued by the Missouri department of
21 transportation or by the United States Department of
22 Transportation, or any of its subagencies. The word
23 "employee" also shall not include any person performing
24 services for board, lodging, aid, or sustenance received
25 from any religious, charitable, or relief organization. **The**
26 **division shall refer to section 285.517 to determine whether**
27 **a person is an independent contractor.**

28 2. The word "accident" as used in this chapter shall
29 mean an unexpected traumatic event or unusual strain
30 identifiable by time and place of occurrence and producing
31 at the time objective symptoms of an injury caused by a
32 specific event during a single work shift. An injury is not
33 compensable because work was a triggering or precipitating
34 factor.

35 3. (1) In this chapter the term "injury" is hereby
36 defined to be an injury which has arisen out of and in the
37 course of employment. An injury by accident is compensable
38 only if the accident was the prevailing factor in causing
39 both the resulting medical condition and disability. "The
40 prevailing factor" is defined to be the primary factor, in
41 relation to any other factor, causing both the resulting
42 medical condition and disability.

43 (2) An injury shall be deemed to arise out of and in
44 the course of the employment only if:

45 (a) It is reasonably apparent, upon consideration of
46 all the circumstances, that the accident is the prevailing
47 factor in causing the injury; and

48 (b) It does not come from a hazard or risk unrelated
49 to the employment to which workers would have been equally

50 exposed outside of and unrelated to the employment in normal
51 nonemployment life.

52 (3) An injury resulting directly or indirectly from
53 idiopathic causes is not compensable.

54 (4) A cardiovascular, pulmonary, respiratory, or other
55 disease, or cerebrovascular accident or myocardial
56 infarction suffered by a worker is an injury only if the
57 accident is the prevailing factor in causing the resulting
58 medical condition.

59 (5) The terms "injury" and "personal injuries" shall
60 mean violence to the physical structure of the body and to
61 the personal property which is used to make up the physical
62 structure of the body, such as artificial dentures,
63 artificial limbs, glass eyes, eyeglasses, and other
64 prostheses which are placed in or on the body to replace the
65 physical structure and such disease or infection as
66 naturally results therefrom. These terms shall in no case
67 except as specifically provided in this chapter be construed
68 to include occupational disease in any form, nor shall they
69 be construed to include any contagious or infectious disease
70 contracted during the course of the employment, nor shall
71 they include death due to natural causes occurring while the
72 worker is at work.

73 4. "Death" when mentioned as a basis for the right to
74 compensation means only death resulting from such violence
75 and its resultant effects occurring within three hundred
76 weeks after the accident; except that in cases of
77 occupational disease, the limitation of three hundred weeks
78 shall not be applicable.

79 5. Injuries sustained in company-owned or subsidized
80 automobiles in accidents that occur while traveling from the
81 employee's home to the employer's principal place of

82 business or from the employer's principal place of business
83 to the employee's home are not compensable. The extension
84 of premises doctrine is abrogated to the extent it extends
85 liability for accidents that occur on property not owned or
86 controlled by the employer even if the accident occurs on
87 customary, approved, permitted, usual or accepted routes
88 used by the employee to get to and from their place of
89 employment.

90 6. The term "total disability" as used in this chapter
91 shall mean inability to return to any employment and not
92 merely mean inability to return to the employment in which
93 the employee was engaged at the time of the accident.

94 7. As used in this chapter and all acts amendatory
95 thereof, the term "commission" shall hereafter be construed
96 as meaning and referring exclusively to the labor and
97 industrial relations commission of Missouri, and the term
98 "director" shall hereafter be construed as meaning the
99 director of the department of commerce and insurance of the
100 state of Missouri or such agency of government as shall
101 exercise the powers and duties now conferred and imposed
102 upon the department of commerce and insurance of the state
103 of Missouri.

104 8. The term "division" as used in this chapter means
105 the division of workers' compensation of the department of
106 labor and industrial relations of the state of Missouri.

107 9. For the purposes of this chapter, the term "minor"
108 means a person who has not attained the age of eighteen
109 years; except that, for the purpose of computing the
110 compensation provided for in this chapter, the provisions of
111 section 287.250 shall control.

112 10. In applying the provisions of this chapter, it is
113 the intent of the legislature to reject and abrogate earlier

114 case law interpretations on the meaning of or definition of
115 "accident", "occupational disease", "arising out of", and
116 "in the course of the employment" to include, but not be
117 limited to, holdings in: *Bennett v. Columbia Health Care*
118 *and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl*
119 *v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and
120 *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases
121 citing, interpreting, applying, or following those cases.

122 11. For the purposes of this chapter, "occupational
123 diseases due to toxic exposure" shall only include the
124 following: mesothelioma, asbestosis, berylliosis, coal
125 worker's pneumoconiosis, bronchiolitis obliterans, silicosis,
126 silicotuberculosis, manganism, acute myelogenous leukemia,
127 and myelodysplastic syndrome.

128 12. For the purposes of this chapter, "maximum medical
129 improvement" shall mean the point at which the injured
130 employee's medical condition has stabilized and can no
131 longer reasonably improve with additional medical care, as
132 determined within a reasonable degree of medical certainty.

288.034. 1. "Employment" means service, including
2 service in interstate commerce, performed for wages or under
3 any contract of hire, written or oral, express or implied,
4 and notwithstanding any other provisions of this section,
5 service with respect to which a tax is required to be paid
6 under any federal unemployment tax law imposing a tax
7 against which credit may be taken for contributions required
8 to be paid into a state unemployment fund or which, as a
9 condition for full tax credit against the tax imposed by the
10 Federal Unemployment Tax Act, is required to be covered
11 under this law.

12 2. The term "employment" shall include an individual's
13 entire service, performed within or both within and without
14 this state if:

15 (1) The service is localized in this state; or

16 (2) The service is not localized in any state but some
17 of the service is performed in this state and the base of
18 operations, or, if there is no base of operations, then the
19 place from which such service is directed or controlled, is
20 in this state; or the base of operations or place from which
21 such service is directed or controlled is not in any state
22 in which some part of the service is performed but the
23 individual's residence is in this state.

24 3. Service performed by an individual for wages shall
25 be deemed to be employment subject to this law:

26 (1) If covered by an election filed and approved
27 pursuant to subdivision (2) of subsection 3 of section
28 288.080;

29 (2) If covered by an arrangement pursuant to section
30 288.340 between the division and the agency charged with the
31 administration of any other state or federal unemployment
32 insurance law, pursuant to which all services performed by
33 an individual for an employing unit are deemed to be
34 performed entirely within this state.

35 4. Service shall be deemed to be localized within a
36 state if the service is performed entirely within such
37 state; or the service is performed both within and without
38 such state, but the service performed without such state is
39 incidental to the individual's service within the state; for
40 example, is temporary or transitory in nature or consists of
41 isolated transactions.

42 5. Service performed by an individual for remuneration
43 shall be deemed to be employment subject to this law unless

44 it is shown to the satisfaction of the division that such
45 services were performed by an independent contractor. In
46 determining the existence of the independent contractor
47 relationship, the [common law of agency right to control
48 shall be applied. The common law of agency right to control
49 test shall include but not be limited to: if the alleged
50 employer retains the right to control the manner and means
51 by which the results are to be accomplished, the individual
52 who performs the service is an employee. If only the
53 results are controlled, the individual performing the
54 service is an independent contractor] **division shall refer**
55 **to section 285.517 to determine whether a person is an**
56 **independent contractor.**

57 6. The term "employment" shall include service
58 performed for wages as an agent-driver or commission-driver
59 engaged in distributing meat products, vegetable products,
60 fruit products, bakery products, beverages (other than
61 milk), or laundry or dry-cleaning services, for his or her
62 principal; or as a traveling or city salesman, other than as
63 an agent-driver or commission-driver, engaged upon a full-
64 time basis in the solicitation on behalf of, and the
65 transmission to, his or her principal (except for sideline
66 sales activities on behalf of some other person) of orders
67 from wholesalers, retailers, contractors, or operators of
68 hotels, restaurants, or other similar establishments for
69 merchandise for resale or supplies for use in their business
70 operations, provided:

71 (1) The contract of service contemplates that
72 substantially all of the services are to be performed
73 personally by such individual; and

74 (2) The individual does not have a substantial
75 investment in facilities used in connection with the

76 performance of the services (other than in facilities for
77 transportation); and

78 (3) The services are not in the nature of a single
79 transaction that is not part of a continuing relationship
80 with the person for whom the services are performed.

81 7. Service performed by an individual in the employ of
82 this state or any political subdivision thereof or any
83 instrumentality of any one or more of the foregoing which is
84 wholly owned by this state and one or more other states or
85 political subdivisions, or any service performed in the
86 employ of any instrumentality of this state or of any
87 political subdivision thereof, and one or more other states
88 or political subdivisions, provided that such service is
89 excluded from employment as defined in the Federal
90 Unemployment Tax Act by Section 3306(c)(7) of that act and
91 is not excluded from employment pursuant to subsection 9 of
92 this section, shall be employment subject to this law.

93 8. Service performed by an individual in the employ of
94 a corporation or any community chest, fund, or foundation
95 organized and operated exclusively for religious,
96 charitable, scientific, testing for public safety, literary,
97 or educational purposes, or for the prevention of cruelty to
98 children or animals, no part of the net earnings of which
99 inures to the benefit of any private shareholder or
100 individual, or other organization described in Section
101 501(c)(3) of the Internal Revenue Code which is exempt from
102 income tax under Section 501(a) of that code if the
103 organization had four or more individuals in employment for
104 some portion of a day in each of twenty different weeks
105 whether or not such weeks were consecutive within a calendar
106 year regardless of whether they were employed at the same
107 moment of time shall be employment subject to this law.

108 9. For the purposes of subsections 7 and 8 of this
109 section, the term "employment" does not apply to service
110 performed:

111 (1) In the employ of a church or convention or
112 association of churches, or an organization which is
113 operated primarily for religious purposes and which is
114 operated, supervised, controlled, or principally supported
115 by a church or convention or association of churches; or

116 (2) By a duly ordained, commissioned, or licensed
117 minister of a church in the exercise of such minister's
118 ministry or by a member of a religious order in the exercise
119 of duties required by such order; or

120 (3) In the employ of a governmental entity referred to
121 in subdivision (3) of subsection 1 of section 288.032 if
122 such service is performed by an individual in the exercise
123 of duties:

124 (a) As an elected official;

125 (b) As a member of a legislative body, or a member of
126 the judiciary, of a state or political subdivision;

127 (c) As a member of the state National Guard or Air
128 National Guard;

129 (d) As an employee serving on a temporary basis in
130 case of fire, storm, snow, earthquake, flood or similar
131 emergency;

132 (e) In a position which, under or pursuant to the laws
133 of this state, is designated as (i) a major nontenured
134 policy-making or advisory position, or (ii) a policy-making
135 or advisory position the performance of the duties of which
136 ordinarily does not require more than eight hours per week;
137 or

138 (4) In a facility conducted for the purpose of
139 carrying out a program of rehabilitation for individuals

140 whose earning capacity is impaired by age or physical or
141 mental deficiency or injury or providing remunerative work
142 for individuals who because of their impaired physical or
143 mental capacity cannot be readily absorbed in the
144 competitive labor market, by an individual receiving such
145 rehabilitation or remunerative work; or

146 (5) As part of an unemployment work-relief or work-
147 training program assisted or financed in whole or in part by
148 any federal agency or an agency of a state or political
149 subdivision thereof, by an individual receiving such work
150 relief or work training; or

151 (6) By an inmate of a custodial or penal institution;
152 or

153 (7) In the employ of a school, college, or university,
154 if such service is performed (i) by a student who is
155 enrolled and is regularly attending classes at such school,
156 college, or university, or (ii) by the spouse of such a
157 student, if such spouse is advised, at the time such spouse
158 commences to perform such service, that (I) the employment
159 of such spouse to perform such service is provided under a
160 program to provide financial assistance to such student by
161 such school, college, or university, and (II) such
162 employment will not be covered by any program of
163 unemployment insurance.

164 10. The term "employment" shall include the service of
165 an individual who is a citizen of the United States,
166 performed outside the United States (except in Canada), if:

167 (1) The employer's principal place of business in the
168 United States is located in this state; or

169 (2) The employer has no place of business in the
170 United States, but:

171 (a) The employer is an individual who is a resident of
172 this state; or

173 (b) The employer is a corporation which is organized
174 under the laws of this state; or

175 (c) The employer is a partnership or a trust and the
176 number of the partners or trustees who are residents of this
177 state is greater than the number who are residents of any
178 one other state; or

179 (3) None of the criteria of subdivisions (1) and (2)
180 of this subsection is met but the employer has elected
181 coverage in this state or, the employer having failed to
182 elect coverage in any state, the individual has filed a
183 claim for benefits, based on such service, under the law of
184 this state;

185 (4) As used in this subsection and in subsection 11 of
186 this section, the term "United States" includes the states,
187 the District of Columbia and the Commonwealth of Puerto Rico.

188 11. An "American employer", for the purposes of
189 subsection 10 of this section, means a person who is:

190 (1) An individual who is a resident of the United
191 States; or

192 (2) A partnership, if two-thirds or more of the
193 partners are residents of the United States; or

194 (3) A trust, if all of the trustees are residents of
195 the United States; or

196 (4) A corporation organized under the laws of the
197 United States or of any state.

198 12. The term "employment" shall not include:

199 (1) Service performed by an individual in agricultural
200 labor;

201 (a) For the purposes of this subdivision, the term
202 "agricultural labor" means remunerated service performed:

203 a. On a farm, in the employ of any person, in
204 connection with cultivating the soil, or in connection with
205 raising or harvesting any agricultural or horticultural
206 commodity, including the raising, shearing, feeding, caring
207 for, training, and management of livestock, bees, poultry,
208 and furbearing animals and wildlife;

209 b. In the employ of the owner or tenant or other
210 operator of a farm, in connection with the operation,
211 management, conservation, improvement, or maintenance of
212 such farm and its tools and equipment, or in salvaging
213 timber or clearing land of brush and other debris left by a
214 hurricane, if the major part of such service is performed on
215 a farm;

216 c. In connection with the production or harvesting of
217 any commodity defined as an agricultural commodity in
218 Section 15(g) of the Federal Agricultural Marketing Act, as
219 amended (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in
220 connection with the ginning of cotton, or in connection with
221 the operation or maintenance of ditches, canals, reservoirs,
222 or waterways, not owned or operated for profit, used
223 exclusively for supplying and storing water for farming
224 purposes;

225 d. (i) In the employ of the operator of a farm in
226 handling, planting, drying, packing, packaging, processing,
227 freezing, grading, storing, or delivering to storage or to
228 market or to a carrier for transportation to market, in its
229 unmanufactured state, any agricultural or horticultural
230 commodity; but only if such operator produced more than one-
231 half of the commodity with respect to which such service is
232 performed;

233 (ii) In the employ of a group of operators of farms
234 (or a cooperative organization of which such operators are

235 members) in the performance of services described in item
236 (i) of this subparagraph, but only if such operators
237 produced more than one-half of the commodity with respect to
238 which such service is performed;

239 (iii) The provisions of items (i) and (ii) of this
240 subparagraph shall not be deemed to be applicable with
241 respect to service performed in connection with commercial
242 canning or commercial freezing or in connection with any
243 agricultural or horticultural commodity after its delivery
244 to a terminal market for distribution for consumption; or

245 e. On a farm operated for profit if such service is
246 not in the course of the employer's trade or business. As
247 used in this paragraph, the term "farm" includes stock,
248 dairy, poultry, fruit, furbearing animals, and truck farms,
249 plantations, ranches, nurseries, ranges, greenhouses or
250 other similar structures, used primarily for the raising of
251 agricultural or horticultural commodities, and orchards;

252 (b) The term "employment" shall include service
253 performed after December 31, 1977, by an individual in
254 agricultural labor as defined in paragraph (a) of this
255 subdivision when such service is performed for a person who,
256 during any calendar quarter, paid remuneration in cash of
257 twenty thousand dollars or more to individuals employed in
258 agricultural labor or for some portion of a day in a
259 calendar year in each of twenty different calendar weeks,
260 whether or not such weeks were consecutive, employed in
261 agricultural labor ten or more individuals, regardless of
262 whether they were employed at the same moment of time;

263 (c) For the purposes of this subsection any individual
264 who is a member of a crew furnished by a crew leader to
265 perform service in agricultural labor for any other person
266 shall be considered as employed by such crew leader:

267 a. If such crew leader holds a valid certificate of
268 registration under the Farm Labor Contractor Registration
269 Act of 1963; or substantially all the members of such crew
270 operate or maintain tractors, mechanized harvesting or crop-
271 dusting equipment, or any other mechanized equipment, which
272 is provided by such crew leader; and

273 b. If such individual is not in employment by such
274 other person;

275 c. If any individual is furnished by a crew leader to
276 perform service in agricultural labor for any other person
277 and that individual is not in the employment of the crew
278 leader:

279 (i) Such other person and not the crew leader shall be
280 treated as the employer of such individual; and

281 (ii) Such other person shall be treated as having paid
282 cash remuneration to such individual in an amount equal to
283 the amount of cash remuneration paid to such individual by
284 the crew leader (either on his or her own behalf or on
285 behalf of such other person) for the service in agricultural
286 labor performed for such other person;

287 d. For the purposes of this subsection, the term "crew
288 leader" means an individual who:

289 (i) Furnishes individuals to perform service in
290 agricultural labor for any other person;

291 (ii) Pays (either on his or her own behalf or on
292 behalf of such other person) the individuals so furnished by
293 him or her for the service in agricultural labor performed
294 by them; and

295 (iii) Has not entered into a written agreement with
296 such other person under which such individual is designated
297 as in employment by such other person;

298 (2) Domestic service in a private home except as
299 provided in subsection 13 of this section;

300 (3) Service performed by an individual under the age
301 of eighteen years in the delivery or distribution of
302 newspapers or shopping news but shall not include delivery
303 or distribution to any point for subsequent delivery or
304 distribution;

305 (4) Service performed by an individual in, and at the
306 time of, the sale of newspapers or magazines to ultimate
307 consumers under an arrangement under which the newspapers or
308 magazines are to be sold by him or her at a fixed price, his
309 or her compensation being based on the retention of the
310 excess of such price over the amount at which the newspapers
311 or magazines are charged to him or her, whether or not he or
312 she is guaranteed a minimum amount of compensation for such
313 service, or is entitled to be credited with the unsold
314 newspapers or magazines turned back;

315 (5) Service performed by an individual in the employ
316 of his or her son, daughter, or spouse, and service
317 performed by a child under the age of twenty-one in the
318 employ of his or her father or mother;

319 (6) Except as otherwise provided in this law, service
320 performed in the employ of a corporation, community chest,
321 fund or foundation, organized and operated exclusively for
322 religious, charitable, scientific, literary, or educational
323 purposes, or for the prevention of cruelty to children or
324 animals, no part of the net earnings of which inures to the
325 benefit of any private shareholder or individual;

326 (7) Services with respect to which unemployment
327 insurance is payable under an unemployment insurance system
328 established by an act of Congress;

329 (8) Service performed in the employ of a foreign
330 government;

331 (9) Service performed in the employ of an
332 instrumentality wholly owned by a foreign government:

333 (a) If the service is of a character similar to that
334 performed in foreign countries by employees of the United
335 States government or of an instrumentality thereof; and

336 (b) If the division finds that the foreign government,
337 with respect to whose instrumentality exemption is claimed,
338 grants an equivalent exemption with respect to similar
339 service performed in the foreign country by employees of the
340 United States government and of instrumentalities thereof.
341 The certification of the United States Secretary of State to
342 the United States Secretary of Treasury shall constitute
343 prima facie evidence of such equivalent exemption;

344 (10) Service covered by an arrangement between the
345 division and the agency charged with the administration of
346 any other state or federal unemployment insurance law
347 pursuant to which all services performed by an individual
348 for an employing unit during the period covered by the
349 employing unit's approved election are deemed to be
350 performed entirely within the jurisdiction of such other
351 state or federal agency;

352 (11) Service performed in any calendar quarter in the
353 employ of a school, college or university not otherwise
354 excluded, if such service is performed by a student who is
355 enrolled and regularly attending classes at such school,
356 college, or university, and the remuneration for such
357 service does not exceed fifty dollars (exclusive of board,
358 room, and tuition);

359 (12) Service performed by an individual for a person
360 as a licensed insurance agent, a licensed insurance broker,

361 or an insurance solicitor, if all such service performed by
362 such individual for such person is performed for
363 remuneration solely by way of commissions;

364 (13) Domestic service performed in the employ of a
365 local college club or of a local chapter of a college
366 fraternity or sorority, except as provided in subsection 13
367 of this section;

368 (14) Services performed after March 31, 1982, in
369 programs authorized and funded by the Comprehensive
370 Employment and Training Act by participants of such
371 programs, except those programs with respect to which
372 unemployment insurance coverage is required by the
373 Comprehensive Employment and Training Act or regulations
374 issued pursuant thereto;

375 (15) Service performed by an individual who is
376 enrolled at a nonprofit or public educational institution
377 which normally maintains a regular faculty and curriculum
378 and normally has a regularly organized body of students in
379 attendance at the place where its educational activities are
380 carried on, as a student in a full-time program, taken for
381 credit at such institution, which combines academic
382 instruction with work experience, if such service is an
383 integral part of such program, and such institution has so
384 certified to the employer; except, that this subdivision
385 shall not apply to service performed in a program
386 established for or on behalf of an employer or group of
387 employers;

388 (16) Services performed by a licensed real estate
389 salesperson or licensed real estate broker if substantially
390 all of the remuneration, whether or not paid in cash, for
391 the services performed, rather than to the number of hours
392 worked, is directly related to sales or other output,

393 including the performance of services, performed pursuant to
394 a written contract between such individual and the person
395 for whom the services are performed and such contract
396 provides that the individual will not be treated as an
397 employee with respect to such services for federal tax
398 purposes;

399 (17) Services performed as a direct seller who is
400 engaged in the trade or business of the delivering or
401 distribution of newspapers or shopping news, including any
402 services directly related to such trade or business, or
403 services performed as a direct seller who is engaged in the
404 trade or business of selling, or soliciting the sale of,
405 consumer products in the home or otherwise than in, or
406 affiliated with, a permanent, fixed retail establishment, if
407 eighty percent or more of the remuneration, whether or not
408 paid in cash, for the services performed rather than the
409 number of hours worked is directly related to sales
410 performed pursuant to a written contract between such direct
411 seller and the person for whom the services are performed,
412 and such contract provides that the individual will not be
413 treated as an employee with respect to such services for
414 federal tax purposes;

415 (18) Services performed as a volunteer research
416 subject who is paid on a per-study basis for scientific,
417 medical or drug-related testing for any organization other
418 than one described in Section 501(c)(3) of the Internal
419 Revenue Code or any governmental entity.

420 13. The term "employment" shall include domestic
421 service as defined in subdivisions (2) and (13) of
422 subsection 12 of this section performed after December 31,
423 1977, if the employing unit for which such service is
424 performed paid cash wages of one thousand dollars or more

425 for such services in any calendar quarter after December 31,
426 1977.

427 14. The term "employment" shall include or exclude the
428 entire service of an individual for an employing unit during
429 a pay period in which such individual's services are not all
430 excluded under the foregoing provisions, on the following
431 basis: if the services performed during one-half or more of
432 any pay period constitute employment as otherwise defined in
433 this law, all the services performed during such period
434 shall be deemed to be employment; but if the services
435 performed during more than one-half of any such pay period
436 do not constitute employment as otherwise defined in this
437 law, then none of the services for such period shall be
438 deemed to be employment. (As used in this subsection, the
439 term "pay period" means a period of not more than thirty-one
440 consecutive days for which a payment of remuneration is
441 ordinarily made to the individual by the employing unit
442 employing such individual.) This subsection shall not be
443 applicable with respect to service performed in a pay period
444 where any such service is excluded pursuant to subdivision
445 (8) of subsection 12 of this section.

446 15. The term "employment" shall not include the
447 services of a full-time student who performed such services
448 in the employ of an organized summer camp for less than
449 thirteen calendar weeks in such calendar year.

450 16. For the purpose of subsection 15 of this section,
451 an individual shall be treated as a full-time student for
452 any period:

453 (1) During which the individual is enrolled as a full-
454 time student at an educational institution; or

455 (2) Which is between academic years or terms if:

456 (a) The individual was enrolled as a full-time student
457 at an educational institution for the immediately preceding
458 academic year or term; and

459 (b) There is a reasonable assurance that the
460 individual will be so enrolled for the immediately
461 succeeding academic year or term after the period described
462 in paragraph (a) of this subdivision.

463 17. For the purpose of subsection 15 of this section,
464 an "organized summer camp" shall mean a summer camp which:

465 (1) Did not operate for more than seven months in the
466 calendar year and did not operate for more than seven months
467 in the preceding calendar year; or

468 (2) Had average gross receipts for any six months in
469 the preceding calendar year which were not more than thirty-
470 three and one-third percent of its average gross receipts
471 for the other six months in the preceding calendar year.

472 18. The term "employment" shall not mean service
473 performed by a remodeling salesperson acting as an
474 independent contractor; however, if the federal Internal
475 Revenue Service determines that a contractual relationship
476 between a direct provider and an individual acting as an
477 independent contractor pursuant to the provisions of this
478 subsection is in fact an employer-employee relationship for
479 the purposes of federal law, then that relationship shall be
480 considered as an employer-employee relationship for the
481 purposes of this chapter.

387.414. 1. Except as provided in section 387.433,
2 all TNC **and** DNC drivers shall be independent contractors and
3 not employees of the TNC **or** DNC if all of the following
4 conditions are met:

5 (1) The TNC **or DNC** does not prescribe specific hours
6 during which a TNC **or DNC** driver must be logged into the
7 TNC's **or DNC's** digital network;

8 (2) The TNC **or DNC** imposes no restrictions on the TNC
9 **or DNC** driver's ability to utilize digital networks from
10 other TNCs **or DNCs**;

11 (3) The TNC **or DNC** does not restrict a TNC **or DNC**
12 driver from engaging in any other occupation or business; and

13 (4) The TNC **or DNC** and TNC **or DNC** driver agree in
14 writing that the driver is an independent contractor with
15 respect to the TNC **or DNC**.

16 **2. For purposes of this section, the following terms**
17 **mean:**

18 (1) "Delivery Network Company" or "DNC", a business
19 entity that maintains an online-enabled application or
20 platform used to facilitate on-demand delivery services
21 within the state of Missouri. Delivery services are on-
22 demand when a DNC driver is given the option to accept or
23 decline each delivery request and the DNC may not terminate
24 the contract of the application-based driver for not
25 accepting a specific delivery service request;

26 (2) "Delivery Services", the fulfillment of a delivery
27 request. A delivery request includes the pickup from any
28 location of any item or items and the delivery of the item
29 or items to a location selected by a customer located within
30 fifty miles of the pickup location. Delivery services may
31 be performed using a passenger vehicle, bicycle, scooter,
32 public transportation, or similar means of transportation.
33 Such services may also be performed on foot. Delivery
34 services may include the selection, collection, or purchase
35 of items by a DNC driver, as well as other tasks incidental
36 to a delivery, including the selection, collection, or

37 purchase of items by a DNC driver when those tasks are done
38 in connection with a delivery the DNC driver has agreed to
39 deliver. Delivery services do not, however, include any
40 services requiring the use of a vehicle weighing in excess
41 of six thousand pounds;

42 (3) "DNC driver", a person who provides delivery
43 services through a DNC's online-enabled application or
44 platform.

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