

FIRST REGULAR SESSION

# HOUSE BILL NO. 1121

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DAVIS.

0125L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 288.030 and 288.032, RSMo, and to enact in lieu thereof two new sections relating to unemployment insurance.

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

Section A. Section 288.030 and 288.032, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 288.030 and 288.032, to read as follows:

288.030. 1. As used in this chapter, unless the context clearly requires otherwise, the following terms mean:

(1) "Appeals tribunal", a referee or a body consisting of three referees appointed to conduct hearings and make decisions on appeals from administrative determinations, petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;

(2) "Base period", the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(3) "Benefit year", the one-year period beginning with the first day of the first week with respect to which an insured worker first files an initial claim for determination of such worker's insured status, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual, providing the individual is then an insured worker, next files such an initial claim after the end of the individual's last preceding benefit year;

(4) "Benefits", the money payments payable to an insured worker, as provided in this chapter, with respect to such insured worker's unemployment;

(5) "Calendar quarter", the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

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.

- 17 (6) "Claimant", an individual who has filed an initial claim for determination of such  
18 individual's status as an insured worker, a notice of unemployment, a certification for waiting  
19 week credit, or a claim for benefits;
- 20 (7) "Commission", the labor and industrial relations commission of Missouri;
- 21 (8) "Common paymaster", two or more related corporations in which one of the  
22 corporations has been designated to disburse remuneration to concurrently employed individuals  
23 of any of the related corporations;
- 24 (9) "Contributions", the money payments to the unemployment compensation fund  
25 required by this chapter, exclusive of interest and penalties;
- 26 (10) "Decision", a ruling made by an appeals tribunal or the commission after a hearing;
- 27 (11) "Deputy", a representative of the division designated to make investigations and  
28 administrative determinations on claims or matters of employer liability or to perform related  
29 work;
- 30 (12) "Determination", any administrative ruling made by the division without a hearing;
- 31 (13) "Director", the administrative head of the division of employment security;
- 32 (14) "Division", the division of employment security which administers this chapter;
- 33 (15) "Employing unit", any individual, organization, partnership, corporation, common  
34 paymaster, or other legal entity, including the legal representatives thereof, which has or,  
35 subsequent to June 17, 1937, had in its employ one or more individuals, **except as provided in**  
36 **subsection 5 of section 288.032**, performing services for it within this state. All individuals  
37 performing services within this state for any employing unit which maintains two or more  
38 separate establishments within this state shall be deemed to be employed by a single employing  
39 unit for all the purposes of this chapter. Each individual engaged to perform or to assist in  
40 performing the work of any person in the service of an employing unit shall be deemed to be  
41 engaged by such employing unit for all the purposes of this chapter, whether such individual was  
42 engaged or paid directly by such employing unit or by such person, provided the employing unit  
43 had actual or constructive knowledge of the work;
- 44 (16) "Employment office", a free public employment office operated by this or any other  
45 state as a part of a state controlled system of public employment offices including any location  
46 designated by the state as being a part of the one-stop career system;
- 47 (17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any  
48 combination of these and any other type of equipment used by authorized carriers in the  
49 transportation of property for hire;
- 50 (18) "Fund", the unemployment compensation fund established by this chapter;
- 51 (19) "Governmental entity", the state, any political subdivision thereof, any  
52 instrumentality of any one or more of the foregoing which is wholly owned by this state and one

53 or more other states or political subdivisions and any instrumentality of this state or any political  
54 subdivision thereof and one or more other states or political subdivisions;

55 (20) "Initial claim", an application, in a form prescribed by the division, made by an  
56 individual for the determination of the individual's status as an insured worker;

57 (21) "Insured work", employment in the service of an employer;

58 (22) (a) As to initial claims filed after December 31, 1990, "insured worker", a worker  
59 who has been paid wages for insured work in the amount of one thousand dollars or more in at  
60 least one calendar quarter of such worker's base period and total wages in the worker's base  
61 period equal to at least one and one-half times the insured wages in that calendar quarter of the  
62 base period in which the worker's insured wages were the highest, or in the alternative, a worker  
63 who has been paid wages in at least two calendar quarters of such worker's base period and  
64 whose total base period wages are at least one and one-half times the maximum taxable wage  
65 base, taxable to any one employer, in accordance with subsection 2 of section 288.036. For the  
66 purposes of this definition, "wages" shall be considered as wage credits with respect to any  
67 benefit year, only if such benefit year begins subsequent to the date on which the employing unit  
68 by which such wages were paid has become an employer;

69 (b) As to initial claims filed after December 31, 2004, wages for insured work in the  
70 amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand  
71 three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or  
72 more, after December 31, 2007, one thousand five hundred dollars or more in at least one  
73 calendar quarter of such worker's base period and total wages in the worker's base period equal  
74 to at least one and one-half times the insured wages in that calendar quarter of the base period  
75 in which the worker's insured wages were the highest, or in the alternative, a worker who has  
76 been paid wages in at least two calendar quarters of such worker's base period and whose total  
77 base period wages are at least one and one-half times the maximum taxable wage base, taxable  
78 to any one employer, in accordance with subsection 2 of section 288.036;

79 (23) "Misconduct", an act of wanton or willful disregard of the employer's interest, a  
80 deliberate violation of the employer's rules, a disregard of standards of behavior which the  
81 employer has the right to expect of his or her employee, or negligence in such degree or  
82 recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and  
83 substantial disregard of the employer's interest or of the employee's duties and obligations to the  
84 employer;

85 (24) "Referee", a representative of the division designated to serve on an appeals  
86 tribunal;

87 (25) "State" includes, in addition to the states of the United States of America, the  
88 District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

89 (26) "Temporary employee", an employee assigned to work for the clients of a temporary  
90 help firm;

91 (27) "Temporary help firm", a firm that hires its own employees and assigns them to  
92 clients to support or supplement the clients' workforce in work situations such as employee  
93 absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

94 (28) (a) An individual shall be deemed "totally unemployed" in any week during which  
95 the individual performs no services and with respect to which no wages are payable to such  
96 individual;

97 (b) a. An individual shall be deemed "partially unemployed" in any week of less than  
98 full-time work if the wages payable to such individual for such week do not equal or exceed the  
99 individual's weekly benefit amount plus twenty dollars;

100 b. Effective for calendar year 2007 and each year thereafter, an individual shall be  
101 deemed "partially unemployed" in any week of less than full-time work if the wages payable to  
102 such individual for such week do not equal or exceed the individual's weekly benefit amount plus  
103 twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater;

104 (c) An individual's "week of unemployment" shall begin the first day of the calendar  
105 week in which the individual registers at an employment office except that, if for good cause the  
106 individual's registration is delayed, the week of unemployment shall begin the first day of the  
107 calendar week in which the individual would have otherwise registered. The requirement of  
108 registration may by regulation be postponed or eliminated in respect to claims for partial  
109 unemployment or may by regulation be postponed in case of a mass layoff due to a temporary  
110 cessation of work;

111 (29) "Waiting week", the first week of unemployment for which a claim is allowed in  
112 a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date  
113 of a shared work plan, the first week of participation in a shared work unemployment  
114 compensation program pursuant to section 288.500.

115 2. The Missouri average annual wage shall be computed as of June thirtieth of each year,  
116 and shall be applicable to the following calendar year. The Missouri average annual wage shall  
117 be calculated by dividing the total wages reported as paid for insured work in the preceding  
118 calendar year by the average of mid-month employment reported by employers for the same  
119 calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri  
120 average annual wage as computed in this subsection by fifty-two.

288.032. 1. After December 31, 1977, "employer" means:

2 (1) Any employing unit which in any calendar quarter in either the current or preceding  
3 calendar year paid for service in employment wages of one thousand five hundred dollars or  
4 more except that for the purposes of this definition, wages paid for "agricultural labor" as defined

5 in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic  
6 services" as defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not  
7 be considered;

8 (2) Any employing unit which for some portion of a day in each of twenty different  
9 calendar weeks, whether or not such weeks were consecutive, in either the current or the  
10 preceding calendar year, had in employment at least one individual, **except as provided in**  
11 **subsection 5 of this section**, (irrespective of whether the same individual was in employment  
12 in each such day); except that for the purposes of this definition, services performed in  
13 "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section  
14 288.034 and in "domestic services" as defined in subdivisions (2) and (13) of subsection 12 of  
15 section 288.034 shall not be considered;

16 (3) Any governmental entity for which service in employment as defined in subsection  
17 7 of section 288.034 is performed;

18 (4) Any employing unit for which service in employment as defined in subsection 8 of  
19 section 288.034 is performed during the current or preceding calendar year;

20 (5) Any employing unit for which service in employment as defined in paragraph (b) of  
21 subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding  
22 calendar year;

23 (6) Any employing unit for which service in employment as defined in subsection 13 of  
24 section 288.034 is performed during the current or preceding calendar year;

25 (7) Any individual, type of organization or employing unit which has been determined  
26 to be a successor pursuant to section 288.110;

27 (8) Any individual, type of organization or employing unit which has elected to become  
28 subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

29 (9) Any individual, type of organization or employing unit which, having become an  
30 employer, has not pursuant to section 288.080 ceased to be an employer;

31 (10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a  
32 condition for approval of this law for full tax credit against the tax imposed by the Federal  
33 Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

34 2. (1) Notwithstanding any other provisions of this law, any employer, individual,  
35 organization, partnership, corporation, other legal entity or employing unit that meets the  
36 definition of "lessor employing unit", as defined in subdivision (5) of this subsection, shall be  
37 liable for contributions on wages paid by the lessor employing unit to individuals performing  
38 services for client lessees of the lessor employing unit. Unless the lessor employing unit has  
39 timely complied with the provisions of subdivision (3) of this subsection, any employer,  
40 individual, organization, partnership, corporation, other legal entity or employing unit which is

41 leasing individuals from any lessor employing unit shall be jointly and severally liable for any  
42 unpaid contributions, interest and penalties due pursuant to this law from any lessor employing  
43 unit attributable to wages for services performed for the client lessee entity by individuals leased  
44 to the client lessee entity, and the lessor employing unit shall keep separate records and submit  
45 separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent  
46 contributions, interest and penalties shall be collected in accordance with the provisions of this  
47 chapter.

48 (2) Notwithstanding the provisions of subdivision (1) of this subsection, any  
49 governmental entity or nonprofit organization that meets the definition of "lessor employing  
50 unit", as defined in subdivision (5) of this subsection, and has elected to become liable for  
51 payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the  
52 division payments in lieu of contributions, interest, penalties and surcharges in accordance with  
53 section 288.090 on benefits paid to individuals performing services for the client lessees of the  
54 lessor employing unit. If the lessor employing unit has not timely complied with the provisions  
55 of subdivision (3) of this subsection, any client lessees with services attributable to and  
56 performed for the client lessees shall be jointly and severally liable for any unpaid payments in  
57 lieu of contributions, interest, penalties and surcharges due pursuant to this law. The lessor  
58 employing unit shall keep separate records and submit separate quarterly contribution and wage  
59 reports for each of its client lessees. Delinquent payments in lieu of contributions, interest,  
60 penalties and surcharges shall be collected in accordance with subsection 3 of section 288.090.  
61 The election to be liable for payments in lieu of contributions made by a governmental entity or  
62 nonprofit organization meeting the definition of "lessor employing unit" may be terminated by  
63 the division in accordance with subsection 3 of section 288.090.

64 (3) In order to relieve a client lessees from joint and several liability and the separate  
65 reporting requirements imposed pursuant to this subsection, any lessor employing unit may post  
66 and maintain a surety bond issued by a corporate surety authorized to do business in Missouri  
67 in an amount equivalent to the contributions or payments in lieu of contributions for which the  
68 lessor employing unit was liable in the last calendar year in which he or she accrued  
69 contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever  
70 amount is the greater, to ensure prompt payment of contributions or payments in lieu of  
71 contributions, interest, penalties and surcharges for which the lessor employing unit may be, or  
72 becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may  
73 deposit in a depository designated by the director, securities with marketable value equivalent  
74 to the amount required for a surety bond. The securities so deposited shall include authorization  
75 to the director to sell any securities in an amount sufficient to pay any contributions or payments  
76 in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails

77 to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision,  
78 any lessor employing unit may provide the director with an irrevocable letter of credit, as defined  
79 in section 409.5-103, RSMo, issued by any state or federally chartered financial institution, in  
80 an amount equivalent to the amount required for a surety bond as described in this subdivision.  
81 In lieu of a surety bond, securities or an irrevocable letter of credit, a lessor employing unit may  
82 obtain a certificate of deposit issued by any state or federally chartered financial institution, in  
83 an amount equivalent to the amount required for a surety bond as described in this subdivision.  
84 The certificate of deposit shall be pledged to the director until release by the director. As used  
85 in this subdivision, the term "certificate of deposit" means a certificate representing any deposit  
86 of funds in a state or federally chartered financial institution for a specified period of time which  
87 earns interest at a fixed or variable rate, where such funds cannot be withdrawn prior to a  
88 specified time without forfeiture of some or all of the earned interest.

89 (4) Any lessor employing unit which is currently engaged in the business of leasing  
90 individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection  
91 by September 28, 1992. Lessor employing units not currently engaged in the business of leasing  
92 individuals to client lessees shall comply with subdivision (3) of this subsection before entering  
93 into a written lease agreement with client lessees.

94 (5) As used in this subsection, the term "lessor employing unit" means an independently  
95 established business entity, governmental entity as defined in subsection 1 of section 288.030  
96 or nonprofit organization as defined in subsection 3 of section 288.090 which, pursuant to a  
97 written lease agreement between the lessor employing unit and the client lessees, engages in the  
98 business of providing individuals to any other employer, individual, organization, partnership,  
99 corporation, other legal entity or employing unit referred to in this subsection as a client lessee.

100 (6) The provisions of this subsection shall not be applicable to private employment  
101 agencies who provide their employees to employers on a temporary help basis provided the  
102 private employment agencies are liable as employers for the payment of contributions on wages  
103 paid to temporary workers so employed.

104 3. After September 30, 1986, notwithstanding any provision of section 288.034, for the  
105 purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri  
106 division of motor carrier and railroad safety or whose operations are confined to a commercial  
107 zone be determined to be the employer of a lessor as defined in 49 CFR Section 376.2(f), or of  
108 a driver receiving remuneration from a lessor as defined in 49 CFR Section 376.2(f), provided,  
109 however, the term "for-hire motor carrier" shall in no event include an organization described  
110 in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

111 4. The owner or operator of a beauty salon or similar establishment shall not be  
112 determined to be the employer of a person who utilizes the facilities of the owner or operator but

113 who receives neither salary, wages or other compensation from the owner or operator and who  
114 pays the owner or operator rent or other payments for the use of the facilities.

115 **5. For purposes of this chapter, employer shall not mean any employing unit that**  
116 **employs one individual.**

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