

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 519**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Workforce Development and Workplace Safety March 9, 2005 with recommendation that House Committee Substitute for House Bill No. 519 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1520L.04C

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**AN ACT**

To repeal sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.121, 288.122, 288.128, 288.190, 288.310, and 288.330, RSMo, and to enact in lieu thereof thirteen 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. Sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.121, 288.122, 288.128, 288.190, 288.310, and 288.330, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.121, 288.122, 288.128, 288.190, 288.310, and 288.330, to read as follows:

288.035. Notwithstanding the provisions of section 288.034, [RSMo,] in the case of an individual who is the owner **as defined in section 301.010, RSMo**, and operator of a motor vehicle which is leased or contracted with driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, **RSMo**, or operating under a certificate issued by the [motor carrier and railroad safety division of the department of economic development] **Missouri department of transportation** under the provisions of this chapter or by the [interstate commerce commission] **United States Department of Transportation, or any of its subagencies**, such owner/operator shall not be deemed to be an employee, provided, however, such individual owner and operator shall be deemed to be in employment if the for-hire [common or contract vehicle] **motor** carrier is an

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.

11 organization described in section 501(c)(3) of the Internal Revenue Code or any governmental  
12 entity.

288.036. 1. "Wages" means all remuneration, payable or paid, for personal services  
2 including commissions and bonuses and, except as provided in subdivision (7) of this section,  
3 the cash value of all remuneration paid in any medium other than cash. Gratuities, including tips  
4 received from persons other than the employing unit, shall be considered wages only if required  
5 to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306,  
6 and shall be, for the purposes of this chapter, treated as having been paid by the employing unit.  
7 Severance pay shall be considered as wages to the extent required pursuant to the Federal  
8 Unemployment Tax Act, 26 U.S.C. Section 3306(b). Vacation pay and holiday pay shall be  
9 considered as wages for the week with respect to which it is payable. The term "wages" shall  
10 not include:

11 (1) The amount of any payment made (including any amount paid by an employing unit  
12 for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of,  
13 an individual under a plan or system established by an employing unit which makes provision  
14 generally for individuals performing services for it or for a class or classes of such individuals,  
15 on account of:

16 (a) Sickness or accident disability, but in case of payments made to an employee or any  
17 of the employee's dependents this paragraph shall exclude from the term "wages" only payments  
18 which are received pursuant to a workers' compensation law; or

19 (b) Medical and hospitalization expenses in connection with sickness or accident  
20 disability; or

21 (c) Death;

22 (2) The amount of any payment on account of sickness or accident disability, or medical  
23 or hospitalization expenses in connection with sickness or accident disability, made by an  
24 employing unit to, or on behalf of, an individual performing services for it after the expiration  
25 of six calendar months following the last calendar month in which the individual performed  
26 services for such employing unit;

27 (3) The amount of any payment made by an employing unit to, or on behalf of, an  
28 individual performing services for it or his or her beneficiary:

29 (a) From or to a trust described in 26 U.S.C. 401(a) which is exempt from tax pursuant  
30 to 26 U.S.C. 501(a) at the time of such payment unless such payment is made to an employee  
31 of the trust as remuneration for services rendered as such an employee and not as a beneficiary  
32 of the trust; or

33 (b) Under or to an annuity plan which, at the time of such payments, meets the  
34 requirements of section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);

35 (4) The amount of any payment made by an employing unit (without deduction from the  
36 remuneration of the individual in employment) of the tax imposed pursuant to section 3101 of  
37 the Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an individual with respect to  
38 remuneration paid to an employee for domestic service in a private home or for agricultural  
39 labor;

40 (5) Remuneration paid in any medium other than cash to an individual for services not  
41 in the course of the employing unit's trade or business;

42 (6) Remuneration paid in the form of meals provided to an individual in the service of  
43 an employing unit where such remuneration is furnished on the employer's premises and at the  
44 employer's convenience, except that remuneration in the form of meals that is considered wages  
45 and required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C.  
46 Sec. 3306 shall be reported as wages as required thereunder;

47 (7) For the purpose of determining wages paid for agricultural labor as defined in  
48 paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service as  
49 defined in subsection 13 of section 288.034, only cash wages paid shall be considered;

50 (8) Beginning on October 1, 1996, any payment to, or on behalf of, an employee or the  
51 employee's beneficiary under a cafeteria plan, if such payment would not be treated as wages  
52 pursuant to the Federal Unemployment Tax Act.

53 2. The increases or decreases to the state taxable wage base for the remainder of calendar  
54 year 2004 shall be eight thousand dollars, and the state taxable wage base in calendar year 2005,  
55 and each calendar year thereafter, shall be determined by the provisions within this subsection.  
56 On January 1, 2005, the state taxable wage base for calendar year 2005, 2006, and 2007 shall be  
57 eleven thousand dollars. [The taxable wage base for calendar year 2008, and each year  
58 thereafter, shall be twelve thousand dollars.] The state taxable wage base for each calendar year  
59 thereafter shall be determined by the preceding September thirtieth balance of the unemployment  
60 compensation trust fund, less any outstanding federal Title XII advances received pursuant to  
61 section 288.330, or if the fund is not utilizing moneys advanced by the federal government, then  
62 less the principal, interest, and administrative expenses related to credit instruments issued under  
63 section 288.330, or the principal, interest, and administrative expenses related to financial  
64 agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest,  
65 and administrative expenses related to a combination of Title XII advances, credit instruments,  
66 and financial agreements. When the September thirtieth unemployment compensation trust fund  
67 balance, or, if the average balance, less any federal advances of the unemployment compensation  
68 trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first,  
69 and December thirty-first of the preceding calendar year) is less any outstanding federal Title XII  
70 advances received pursuant to section 288.330, is:

71 (1) Less than, or equal to, three hundred fifty million dollars, then the wage base shall  
72 increase by one thousand dollars; or

73 (2) Six hundred fifty million or more, then the state taxable wage base for the subsequent  
74 calendar year shall be decreased by five hundred dollars. In no event, however, shall the state  
75 taxable wage base increase beyond twelve thousand dollars, or decrease to less than seven  
76 thousand dollars. [For calendar year 2009, the tax wage base shall be twelve thousand five  
77 hundred dollars. For calendar year 2010 and each calendar year thereafter, in no event shall the  
78 state taxable wage base increase beyond thirteen thousand dollars, or decrease to less than seven  
79 thousand dollars.] **In the first calendar year subsequent to the effective date of this section,**  
80 **when the September thirtieth balance in the unemployment compensation trust fund, less**  
81 **any outstanding federal Title XII advances received under section 288.330, or if the fund**  
82 **is not utilizing moneys advanced by the federal government, then less the principal,**  
83 **interest, and administrative expenses related to credit instruments issued under section**  
84 **288.330, or the principal, interest, and administrative expenses related to financial**  
85 **agreements under subdivision (17) of section 288.330, or the principal, interest, and**  
86 **administrative expenses related to a combination of Title XII advances, credit instruments,**  
87 **and financial agreements, equals or exceeds four hundred million dollars, the state taxable**  
88 **wage base for the next calendar year and each calendar year thereafter shall not increase**  
89 **beyond eleven thousand dollars.**

90

91 For any calendar year, the state taxable wage base shall not be reduced to less than that part of  
92 the remuneration which is subject to a tax under a federal law imposing a tax against which  
93 credit may be taken for contributions required to be paid into a state unemployment  
94 compensation trust fund. Nothing in this section shall be construed to prevent the wage base  
95 from increasing or decreasing by increments of five hundred dollars.

288.038. With respect to initial claims filed during calendar years 2004 and 2005, the  
2 "maximum weekly benefit amount" means four percent of the total wages paid to an eligible  
3 insured worker during that quarter of the worker's base period in which the worker's wages were  
4 the highest, but the maximum weekly benefit amount shall not exceed two hundred fifty dollars  
5 in the calendar years 2004 and 2005. With respect to initial claims filed during calendar [years]  
6 **year 2006 [and 2007] and each calendar year thereafter,** the "maximum weekly benefit  
7 amount" means three and three-fourths percent of **the average of** the total wages paid to an  
8 eligible insured worker during [that quarter] **the two highest quarters** of the worker's base  
9 period [in which the worker's wages were the highest, but the maximum weekly benefit amount  
10 shall not exceed two hundred seventy dollars in calendar year 2006 and the maximum weekly  
11 benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With respect

12 to initial claims filed during calendar year 2008 and each calendar year thereafter, the "maximum  
13 weekly benefit amount" means four percent of the total wages paid to an eligible insured worker  
14 during the average of the two highest quarters of the worker's base period, but the maximum  
15 weekly benefit amount shall not exceed three hundred dollars in calendar year 2008, three  
16 hundred ten dollars in calendar year 2009, three hundred twenty dollars in calendar year 2010,  
17 and each calendar year thereafter]. **Beginning in calendar year 2006 and continuing each**  
18 **calendar year thereafter, the maximum weekly benefit amount shall not exceed two**  
19 **hundred fifty dollars if the balance of the unemployment compensation trust fund is less**  
20 **than or equal to four hundred million dollars. Beginning on January first of the year**  
21 **following the year in which the balance in the unemployment compensation trust fund**  
22 **exceeds four hundred million dollars, the maximum weekly benefit amount shall increase**  
23 **to two hundred seventy dollars. In each subsequent year in which the unemployment**  
24 **compensation trust fund balance exceeds four hundred million dollars the maximum**  
25 **weekly benefit amount shall increase by ten dollars, except in no case shall the weekly**  
26 **benefit amount increase beyond three hundred twenty dollars. For purposes of this**  
27 **section, the balance in the fund shall be determined to be the balance in the unemployment**  
28 **compensation trust fund on the preceding September thirtieth less any outstanding federal**  
29 **Title XII advances received under section 288.330, or if the fund is not utilizing moneys**  
30 **advanced by the federal government, then less the principal, interest, and administrative**  
31 **expenses related to credit instruments issued under section 288.330, or the principal,**  
32 **interest, and administrative expenses related to financial agreements under subdivision**  
33 **(17) of section 288.330, or the principal, interest, and administrative expenses related to a**  
34 **combination of Title XII advances, credit instruments, and financial agreements. If such**  
35 **benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower**  
36 **full dollar amount.**

288.045. 1. If a claimant is at work with a detectible amount of alcohol or a controlled  
2 substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the  
3 employer's alcohol and controlled substance workplace policy, the claimant shall have committed  
4 misconduct connected with the claimant's work.

5 2. [For carboxy-tetrahydrocannabinol, a chemical test result of fifty nannograms per  
6 milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content  
7 of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be  
8 considered a detectible amount.

9 3.] If the test is conducted by a laboratory certified by the United States Department of  
10 Transportation **or another accrediting organization, certifying organization, or professional**

11 **society approved by the department**, the test results and the laboratory's trial packet shall be  
12 included in the administrative record and considered as evidence.

13 [4.] **3.** For this section to be applicable, the claimant must have previously been notified  
14 of the employer's alcohol and controlled substance workplace policy by conspicuously posting  
15 the policy in the workplace, by including the policy in a written personnel policy or handbook,  
16 or by statement of such policy in a collective bargaining agreement governing employment of  
17 the employee. The policy, **public posting, collective bargaining agreement, or other written**  
18 **notice provided to the employee** must state that a positive test result shall be deemed  
19 misconduct and may result in suspension or termination of employment.

20 [5. For this section to be applicable, testing] **4. Test results** shall be [conducted only  
21 if sufficient cause exists to suspect alcohol or controlled substance use by the claimant. If  
22 sufficient cause exists to suspect prior alcohol or controlled substance use by the claimant, or]  
23 **admissible if** the employer's policy clearly states [that there will] **an employee may be subject**  
24 **to** random testing[, then testing of the claimant may be conducted randomly].

25 [6.] **An employer may require a preemployment test for alcohol or controlled**  
26 **substance use as a condition of employment, and test results shall be admissible so long as**  
27 **the claimant was informed of the test requirement prior to taking the test. A random or**  
28 **preemployment test result, conducted under this section, which is positive for alcohol or**  
29 **controlled substance use shall be considered misconduct. A chemical test administered**  
30 **when sufficient cause exists to suspect alcohol or controlled substance use by the claimant,**  
31 **or when administered randomly under subsection 3 of this section or when administered**  
32 **prior to or as a condition of employment shall be deemed misconduct if such test result is**  
33 **positive for alcohol or a controlled substance.**

34 **5.** Notwithstanding any provision of this chapter to the contrary, any claimant found to  
35 be in violation of this section shall be subject to the cancellation of all or part of the claimants  
36 wage credits as provided by [subdivision (2) of] subsection 2 of section 288.050.

37 [7.] **6.** The application [of the alcohol and controlled substance testing provisions] of this  
38 section **for alcohol and controlled substance testing, relating only to methods of testing,**  
39 **criteria for testing, chain of custody for samples or specimens, and due process or employee**  
40 **notification procedures** shall not apply in the event that the claimant is subject to the provisions  
41 of any applicable collective bargaining agreement, [which] **so long as such agreement** contains  
42 methods for alcohol or controlled substance testing **that meet or exceed the minimum**  
43 **standards established in this section.** Nothing in this chapter is intended to authorize any  
44 employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with  
45 Missouri or United States constitution, law, statute or regulation, including those imposed by the  
46 Americans with Disabilities Act and the National Labor Relations Act.

47 [8.] **7.** All specimen collection and testing for drugs and alcohol under this chapter shall  
48 be performed in accordance with the procedures provided for by the United States Department  
49 of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40  
50 **or another accrediting organization, certifying organization, or professional society**  
51 **approved by the department.** Any employer that performs drug testing or specimen collection  
52 shall use chain-of-custody procedures established by regulations of the United States Department  
53 of Transportation **or such other approved accrediting organization or professional society.**  
54 "Specimen" means tissue, fluid, or a product of the human body capable of revealing the  
55 presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the methodology  
56 of tracking specified materials or substances for the purpose of maintaining control and  
57 accountability from initial collection to final disposition for all such materials or substances, and  
58 providing for accountability at each stage in handling, testing, and storing specimens and  
59 reporting test results.

60 [9.] **8.** For this section to be applicable, the employee may request that a confirmation  
61 test on the specimen be conducted. "Confirmation test" means a second analytical procedure  
62 used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test  
63 must be different in scientific principle from that of the initial test procedure and must be capable  
64 of providing requisite specificity, sensitivity and quantitative accuracy. In the event that a  
65 confirmation test is requested, such shall be obtained from a separate, unrelated certified  
66 laboratory and shall be at the employee's expense only if said test confirms **initial** results [as  
67 specified in subsection 2 of this section].

68 [10.] **9.** Use of a controlled substance as defined under section 195.010, RSMo, under  
69 and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be  
70 misconduct connected with work for the purposes of this section.

71 [11.] **10.** This section shall have no effect on employers who do not avail themselves of  
72 the requirements and regulations for alcohol and controlled drug testing determinations that are  
73 required to affirm misconduct connected with work findings.

74 [12.] **11.** Any employer that initiates an alcohol and drug testing policy after January 1,  
75 2005, shall ensure that at least sixty days elapse between a general one-time notice to all  
76 employees that an alcohol and drug testing workplace policy is being implemented and the  
77 effective date of the program.

78 [13.] **12.** (1) In applying provisions of this chapter, it is the intent of the legislature to  
79 reject and abrogate previous case law interpretations of "misconduct connected with work"  
80 requiring a finding of evidence of impairment of work performance, including, but not limited  
81 to, the holdings contained in *Baldor Electric Company v. Raylene Reasoner* and *Missouri*  
82 *Division of Employment Security*, 66 S.W.3d 130 (Mo.App. E.D. 2001).

83 (2) In determining whether or not misconduct connected with work has occurred, neither  
84 the state, any agency of the state, nor any court of the state of Missouri shall require a finding of  
85 evidence of impairment of work performance.

86 **13. A discharge relating to a claimant's refusal to take a test for alcohol or**  
87 **controlled substances, as defined by section 195.010, RSMo, administered by or at the**  
88 **request of the employer shall be considered misconduct connected with the claimant's**  
89 **work. If a deputy finds that a claimant has been discharged under this subsection, such**  
90 **claimant shall be disqualified for waiting week credit and benefits under the provisions of**  
91 **section 288.050.**

92 14. Notwithstanding any provision of this chapter to the contrary, any claimant found  
93 to be in violation of this section shall be subject to the cancellation of all or part of the claimants  
94 wage credits as provided by [subdivision (2) of] subsection 2 of section 288.050.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be  
2 disqualified for waiting week credit or benefits until after the claimant has earned wages for  
3 work insured pursuant to the unemployment compensation laws of any state equal to ten times  
4 the claimant's weekly benefit amount if the deputy finds:

5 (1) That the claimant has left work voluntarily without good cause attributable to such  
6 work or to the claimant's employer. A temporary employee of a temporary help firm will be  
7 deemed to have voluntarily quit employment if the employee does not contact the temporary help  
8 firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will  
9 not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact  
10 the firm upon completion of assignments and that unemployment benefits may be denied for  
11 failure to do so. The claimant shall not be disqualified:

12 (a) If the deputy finds the claimant quit such work for the purpose of accepting a more  
13 remunerative job which the claimant did accept and earn some wages therein;

14 (b) If the claimant quit temporary work to return to such claimant's regular employer; or

15 (c) If the deputy finds the individual quit work, which would have been determined not  
16 suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within  
17 twenty-eight calendar days of the first day worked;

18 (d) As to initial claims filed after December 31, 1988, if the claimant presents evidence  
19 supported by competent medical proof that she was forced to leave her work because of  
20 pregnancy, notified her employer of such necessity as soon as practical under the circumstances,  
21 and returned to that employer and offered her services to that employer as soon as she was  
22 physically able to return to work, as certified by a licensed and practicing physician, but in no  
23 event later than ninety days after the termination of the pregnancy. An employee shall have been



24 employed for at least one year with the same employer before she may be provided benefits  
25 pursuant to the provisions of this paragraph;

26 (2) That the claimant has retired pursuant to the terms of a labor agreement between the  
27 claimant's employer and a union duly elected by the employees as their official representative  
28 or in accordance with an established policy of the claimant's employer; or

29 (3) That the claimant failed without good cause either to apply for available suitable  
30 work when so directed by the deputy, or to accept suitable work when offered the claimant, either  
31 through the division or directly by an employer by whom the individual was formerly employed,  
32 or to return to the individual's customary self-employment, if any, when so directed by the  
33 deputy. An offer of work shall be rebuttably presumed if an employer notifies the claimant in  
34 writing of such offer by sending an acknowledgment via any form of certified mail issued by the  
35 United States Postal Service stating such offer to the claimant at the claimant's last known  
36 address. Nothing in this subdivision shall be construed to limit the means by which the deputy  
37 may establish that the claimant has or has not been sufficiently notified of available work.

38 (a) In determining whether or not any work is suitable for an individual, the division  
39 shall consider, among other factors and in addition to those enumerated in paragraph (b) of this  
40 subdivision, the degree of risk involved to the individual's health, safety and morals, the  
41 individual's physical fitness and prior training, the individual's experience and prior earnings, the  
42 individual's length of unemployment, the individual's prospects for securing work in the  
43 individual's customary occupation, the distance of available work from the individual's residence  
44 and the individual's prospect of obtaining local work; except that, if an individual has moved  
45 from the locality in which the individual actually resided when such individual was last  
46 employed to a place where there is less probability of the individual's employment at such  
47 individual's usual type of work and which is more distant from or otherwise less accessible to  
48 the community in which the individual was last employed, work offered by the individual's most  
49 recent employer if similar to that which such individual performed in such individual's last  
50 employment and at wages, hours, and working conditions which are substantially similar to those  
51 prevailing for similar work in such community, or any work which the individual is capable of  
52 performing at the wages prevailing for such work in the locality to which the individual has  
53 moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable  
54 for the individual;

55 (b) Notwithstanding any other provisions of this law, no work shall be deemed suitable  
56 and benefits shall not be denied pursuant to this law to any otherwise eligible individual for  
57 refusing to accept new work under any of the following conditions:

58 a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

59           b. If the wages, hours, or other conditions of the work offered are substantially less  
60 favorable to the individual than those prevailing for similar work in the locality;

61           c. If as a condition of being employed the individual would be required to join a  
62 company union or to resign from or refrain from joining any bona fide labor organization.

63           2. If a deputy finds that a claimant has been discharged for misconduct connected with  
64 the claimant's work, such claimant shall be disqualified for waiting week credit and benefits, and  
65 no benefits shall be paid nor shall the cost of any benefits be charged against any employer for  
66 any period of employment within the base period until the claimant has earned wages for work  
67 insured under the unemployment laws of this state or any other state as prescribed in this section.  
68 In addition to the disqualification for benefits pursuant to this provision the division may in the  
69 more aggravated cases of misconduct, cancel all or any part of the individual's wage credits,  
70 which were established through the individual's employment by the employer who discharged  
71 such individual, according to the seriousness of the misconduct. A disqualification provided for  
72 pursuant to this subsection shall not apply to any week which occurs after the claimant has  
73 earned wages for work insured pursuant to the unemployment compensation laws of any state  
74 in an amount equal to six times the claimant's weekly benefit amount. **Should a claimant be**  
75 **disqualified on a second or subsequent occasion within the base period the claimant shall**  
76 **be required to earn wages in an amount equal to or in excess of six times the claimant's**  
77 **weekly benefit amount for each disqualification, such additionally required wages shall run**  
78 **consecutively.**

79           3. Absenteeism or tardiness [may] **shall** constitute misconduct, regardless of whether the  
80 last incident alone constitutes misconduct[. In determining whether the degree of absenteeism  
81 or tardiness constitutes a pattern for which misconduct may be found, the division shall consider  
82 whether], **if** the discharge was the result of a violation of the employer's attendance policy,  
83 provided the employee had received knowledge of such policy prior to the occurrence of any  
84 absence or tardy upon which the discharge is based.

85           4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be  
86 determined to be disqualified for benefits because the claimant is in training approved pursuant  
87 to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or  
88 because the claimant left work which was not "suitable employment" to enter such training. For  
89 the purposes of this subsection "suitable employment" means, with respect to a worker, work of  
90 a substantially equal or higher skill level than the worker's past adversely affected employment,  
91 and wages for such work at not less than eighty percent of the worker's average weekly wage as  
92 determined for the purposes of the Trade Act of 1974.

288.060. 1. All benefits shall be paid through employment offices in accordance with  
2 such regulations as the division may prescribe.

3           2. Each eligible insured worker who is totally unemployed in any week shall be paid for  
4 such week a sum equal to his or her weekly benefit amount.

5           3. Each eligible insured worker who is partially unemployed in any week shall be paid  
6 for such week a partial benefit. Such partial benefit shall be an amount equal to the difference  
7 between his or her weekly benefit amount and that part of his or her wages for such week in  
8 excess of twenty dollars, and, if such partial benefit amount is not a multiple of one dollar, such  
9 amount shall be reduced to the nearest lower full dollar amount. For calendar year 2007 and  
10 each year thereafter, such partial benefit shall be an amount equal to the difference between his  
11 or her weekly benefit amount and that part of his or her wages for such week in excess of twenty  
12 dollars or twenty percent of his or her weekly benefit amount, whichever is greater, and, if such  
13 partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest  
14 lower full dollar amount. Termination pay, severance pay or pay received by an eligible insured  
15 worker who is a member of the organized militia for training or duty authorized by section  
16 502(a)(1) of Title 32, United States Code, shall not be considered wages for the purpose of this  
17 subsection.

18           4. The division shall compute the wage credits for each individual by crediting him or  
19 her with the wages paid to him or her for insured work during each quarter of his or her base  
20 period or twenty-six times his or her weekly benefit amount, whichever is the lesser. In addition,  
21 if a claimant receives wages in the form of termination pay or severance pay and such payment  
22 appears in a base period established by the filing of an initial claim, the claimant may, at his or  
23 her option, choose to have such payment included in the calendar quarter in which it was paid  
24 or choose to have it prorated equally among the quarters comprising the base period of the claim.  
25 The maximum total amount of benefits payable to any insured worker during any benefit year  
26 shall not exceed twenty-six times his or her weekly benefit amount, or thirty-three and one-third  
27 percent of his or her wage credits, whichever is the lesser. For the purpose of this section, wages  
28 shall be counted as wage credits for any benefit year, only if such benefit year begins subsequent  
29 to the date on which the employing unit by whom such wages were paid has become an  
30 employer. The wage credits of an individual earned during the period commencing with the end  
31 of a prior base period and ending on the date on which he or she filed an allowed initial claim  
32 shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto,  
33 such individual has subsequently earned either wages for insured work in an amount equal to at  
34 least five times his or her current weekly benefit amount or wages in an amount equal to at least  
35 ten times his or her current weekly benefit amount.

36           5. In the event that benefits are due a deceased person and no petition has been filed for  
37 the probate of the will or for the administration of the estate of such person within thirty days  
38 after his or her death, the division may by regulation provide for the payment of such benefits

39 to such person or persons as the division finds entitled thereto and every such payment shall be  
40 a valid payment to the same extent as if made to the legal representatives of the deceased.

41 6. The division is authorized to cancel any benefit warrant remaining outstanding and  
42 unpaid one year after the date of its issuance and there shall be no liability for the payment of any  
43 such benefit warrant thereafter.

44 7. The division may establish an electronic funds transfer system to transfer directly to  
45 claimants' accounts in financial institutions benefits payable to them pursuant to this chapter.  
46 To receive benefits by electronic funds transfer, a claimant shall satisfactorily complete a direct  
47 deposit application form authorizing the division to deposit benefit payments into a designated  
48 checking or savings account. Any electronic funds transfer system created pursuant to this  
49 subsection shall be administered in accordance with regulations prescribed by the division.

50 8. The division may issue a benefit warrant covering more than one week of benefits.

51 9. Prior to January 1, 2005, the division shall institute procedures including, but not  
52 limited to, name, date of birth, and Social Security verification matches for remote claims filing  
53 via the use of telephone or the Internet in accordance with such regulations as the division shall  
54 prescribe. At a minimum, the division shall verify the Social Security number and date of birth  
55 when an individual claimant initially files for unemployment insurance benefits. If verification  
56 information does not match what is on file in division databases to what the individual is stating,  
57 the division shall require the claimant to submit a division-approved form requesting an affidavit  
58 of eligibility prior to the payment of additional future benefits. The division of employment  
59 security shall cross-check unemployment compensation applicants and recipients with Social  
60 Security Administration data maintained by the federal government on the most frequent basis  
61 recommended by the United States Department of Labor, or absent a recommendation, at least  
62 monthly. **Effective January 1, 2007**, the division of employment security shall cross-check at  
63 least monthly unemployment compensation applicants and recipients with department of revenue  
64 drivers license databases.

288.110. 1. Any individual, type of organization or employing unit which has acquired  
2 substantially all of the business of an employer, excepting in any such case any assets retained  
3 by such employer incident to the liquidation of his obligations, and in respect to which the  
4 division finds that immediately after such change such business of the predecessor employer is  
5 continued without interruption solely by the successor, shall stand in the position of such  
6 predecessor employer in all respects, including the predecessor's separate account, actual  
7 contribution and benefit experience, annual payrolls, and liability for current or delinquent  
8 contributions, interest and penalties. If two or more individuals, organizations, or employing  
9 units acquired at approximately the same time substantially all of the business of an employer  
10 (excepting in any such case any assets retained by such employer incident to the liquidation of

11 his obligations) and in respect to which the division finds that immediately after such change all  
12 portions of such business of the predecessor are continued without interruption solely by such  
13 successors, each such individual, organization, or employing unit shall stand in the position of  
14 such predecessor with respect to the proportionate share of the predecessor's separate account,  
15 actual contribution and benefit experience and annual payroll as determined by the portion of the  
16 predecessor's taxable payroll applicable to the portion of the business acquired, and each such  
17 individual, organization or employing unit shall be liable for current or delinquent contributions,  
18 interest and penalties of the predecessor in the same relative proportion. Further, any successor  
19 under this section which was not an employer at the time the acquisition occurred shall pay  
20 contributions for the balance of the current rate year at the same contribution rate as the  
21 contribution rate of the predecessor whether such rate is more or less than two and seven-tenths  
22 percent, provided there was only one predecessor or there were only predecessors with identical  
23 rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date  
24 of acquisition applicable to the successor for the remainder of the rate year, which rate shall be  
25 based on the combined experience of all predecessor employers. In the event that any successor  
26 was, prior to an acquisition, an employer, and there is a difference in the contribution rate  
27 established for such calendar year applicable to any acquired or acquiring employer, the division  
28 shall make a recalculation of the contribution rate applicable to any successor employer based  
29 upon the combined experience of all predecessor and successor employers as of the date of the  
30 acquisition, unless the date of the acquisition is other than the first day of the calendar quarter.  
31 If the date of any such acquisition is other than the first day of the calendar quarter, the division  
32 shall make the recalculation of the rate on the first day of the next calendar quarter after the  
33 acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the  
34 successor employer shall use its rate for the calendar quarter in which the acquisition was made.  
35 The revised contribution rate shall apply to employment after the rate recalculation. For this  
36 purpose a calculation date different from July first may be established. When the division has  
37 determined that a successor or successors stand in the position of a predecessor employer, the  
38 predecessor's liability shall be terminated as of the date of the acquisition.

39 **2. If an employer transfers its trade or business, or a portion thereof, to another**  
40 **employer and, at the time of the transfer, there is substantially common ownership,**  
41 **management, or control of the two employers, then the unemployment experience**  
42 **attributable to the transferred trade or business shall be transferred to the employer to**  
43 **whom such business is so transferred. The rates and liabilities of both employers shall be**  
44 **recalculated and made effective under this section.**

45 **3. Whenever any individual, type of organization, or employing unit who is not an**  
46 **employer under this chapter at the time it acquires the trade or business of an employer,**

47 the unemployment experience of the acquired business shall not be transferred to such  
48 individual, organization, or employing unit if the division finds that such individual,  
49 organization, or employing unit acquired the business solely or primarily for the purpose  
50 of obtaining a lower rate of contributions. Instead, such individual, organization, or  
51 employing unit shall be assigned the applicable new employer rate under section 288.090.  
52 In determining whether the business was acquired solely or primarily for the purpose of  
53 obtaining a lower rate of contributions, the division shall use objective factors which may  
54 include the cost of acquiring the business, whether the individual, organization, or  
55 employing unit continued the business enterprise of the acquired business, how long such  
56 business enterprise was continued, or whether a substantial number of new employees  
57 were hired for performance of duties unrelated to the business activity conducted prior to  
58 acquisition.

59 4. (1) If an individual, organization, or employing unit knowingly violates or  
60 attempts to violate this section related to determining the assignment of a contribution rate,  
61 or if an individual, organization, or employing unit knowingly advises another individual,  
62 organization, or employing unit in a way that results in a violation of such provision, the  
63 individual, organization, or employing unit shall be subject to the following penalties:

64 (a) If the individual, organization, or employing unit is an employer under this  
65 chapter, then for the current year and the three rate years immediately following this rate  
66 year, such employer's base rate shall be the maximum base rate applicable to this type of  
67 employer, or the employer's current base rate plus two percent, whichever is greater.

68 (b) If the individual, organization, or employing unit is not an employer under this  
69 chapter, such individual, organization, or employing unit shall be subject to a civil money  
70 penalty of not more than five thousand dollars. Any such fine shall be deposited in the  
71 special employment security fund established under section 288.310, RSMo.

72 (2) In addition to the penalty imposed by subsection 4 of this section, any violation  
73 of this section may be prosecuted under section 288.395.

74 5. For purposes of this section, the following terms shall mean:

75 (1) "Base rate", the employer's contribution rate as determined by section 288.090,  
76 subsections 1, 2, and 3 of section 288.120, section 288.126, or a federal base rate  
77 assignment;

78 (2) "Knowingly", having actual knowledge of or acting with deliberate ignorance  
79 or reckless disregard for the prohibition involved;

80 (3) "Violates or attempts to violate", includes, but is not limited to, intent to evade,  
81 misrepresentation, or willful nondisclosure.

82           **6. The division shall establish procedures to identify the transfer or acquisition of**  
 83 **a business for purposes of this section.**

84           **7. This section shall be interpreted and applied in such a manner as to meet the**  
 85 **minimum requirements contained in any guidance or regulations issued by the United**  
 86 **States Department of Labor.**

288.121. 1. On October first of each calendar year, if the average balance, less any  
 2 federal advances, of the unemployment compensation trust fund of the four preceding quarters  
 3 (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding  
 4 calendar year) is less than four hundred fifty million dollars, then each employer's contribution  
 5 rate calculated for the four calendar quarters of the succeeding calendar year shall be increased  
 6 by the percentage determined from the following table:

	Balance in Trust Fund		Percentage
	Less Than	Equals or Exceeds	of Increase
11	\$450,000,000	\$400,000,000	10%
12	\$400,000,000	\$350,000,000	20%
13	\$350,000,000		30%

14  
 15 [For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying  
 16 the maximum contribution rate shall be increased by forty percent, instead of thirty percent as  
 17 previously indicated in the table in this section.]

18           2. For calendar years 2005, 2006, and 2007, an employer's total contribution rate shall  
 19 equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to  
 20 the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the  
 21 contribution rate plus the increase authorized under subsection 1 of this section. Any moneys  
 22 overcollected beyond the actual administrative, interest and principal repayment costs for the  
 23 credit instruments used shall be deposited into the state unemployment insurance trust fund and  
 24 credited to the employer's experience account. The temporary debt indebtedness assessment  
 25 shall expire upon the last day of the fourth calendar quarter of [2007] **2020 or whenever the**  
 26 **balance of the unemployment compensation fund, less any federal advances or outstanding**  
 27 **credit instruments, is greater than or equal to zero.**

288.122. On October first of each calendar year, if the average balance, less any federal  
 2 advances, of the unemployment compensation trust fund of the four preceding quarters  
 3 (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding  
 4 calendar year) is more than [five] **six** hundred million dollars, then each employer's contribution

5 rate calculated for the four calendar quarters of the succeeding calendar year shall be decreased  
 6 by the percentage determined from the following table:

7 Balance in Trust Fund		8 Percentage
9 More Than	10 But Less Than	11 of Decrease
10 \$600,000,000	\$750,000,000	7%
11 \$750,000,000		12%

12  
 13 Notwithstanding the table in this section, if the balance in the unemployment insurance  
 14 compensation trust fund as calculated in this section is more than seven hundred fifty million  
 15 dollars, the percentage of decrease of the employer's contribution rate calculated for the four  
 16 calendar quarters of the succeeding calendar year shall be no greater than ten percent for any  
 17 employer whose calculated contribution rate under section 288.120 is six percent or greater.

288.128. 1. In addition to all other contributions due under this chapter, if the fund is  
 2 utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A.,  
 3 Section 1321 pursuant to section 288.330, or if the fund is not utilizing moneys advanced by the  
 4 federal government, then from the proceeds of credit instruments issued under section 288.330,  
 5 or from the moneys advanced under financial agreements under subdivision (17) of subsection  
 6 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced  
 7 under financial agreements, each employer shall be assessed an amount solely for the payment  
 8 of interest due on such federal advancements, or if the fund is not utilizing moneys advanced by  
 9 the federal government, or in the case of issuance of credit instruments for the payment of the  
 10 [principal,] interest[,] and administrative expenses related to such credit instruments, or in the  
 11 case of financial agreements for the payment of [principal,] interest[,] and administrative  
 12 expenses related to such financial agreements, or in the case of a combination of credit  
 13 instruments and financial agreements for the payment of [principal,] interest[,] and  
 14 administrative expenses for both. The rate shall be determined by dividing the interest due on  
 15 federal advancements or if the fund is not utilizing moneys advanced by the federal government,  
 16 then the [principal,] interest[,] and administrative expenses related to credit instruments, or the  
 17 [principal,] interest[,] and administrative expenses related to financial agreements under  
 18 subdivision (17) of subsection 2 of section 288.330, or the [principal,] interest[,] and  
 19 administrative expenses related to a combination of credit instruments and financial agreements  
 20 by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding  
 21 calendar year. Each employer's proportionate share shall be the product obtained by multiplying  
 22 such employer's total taxable wages for the preceding calendar year by the rate specified in this  
 23 section. Each employer shall be notified of the amount due under this section by June thirtieth



24 of each year and such amount shall be considered delinquent thirty days thereafter. The moneys  
25 collected from each employer for the payment of interest due on federal advances, or if the fund  
26 is not utilizing moneys advanced by the federal government, then the payment of [principal,]  
27 interest[,] and administrative expenses related to credit instruments, or the payment of the  
28 [principal,] interest[,] and administrative expenses related to financial agreements under  
29 subdivision (17) of subsection 2 of section 288.330, or the payment of the [principal,] interest[,]  
30 and administrative expenses related to a combination of credit instruments and financial  
31 agreements, shall be deposited in the special employment security fund.

32         2. If on December thirty-first of any year the money collected under this section exceeds  
33 the amount of interest due on federal advancements by one hundred thousand dollars or more,  
34 then each employer's experience rating account shall be credited with an amount which bears the  
35 same ratio to the excess moneys collected under this section as that employer's payment collected  
36 under this section bears to the total amount collected under this section. Further, if on December  
37 thirty-first of any year the moneys collected under this section exceed the amount of interest due  
38 on the federal advancements by less than one hundred thousand dollars, the balance shall be  
39 transferred from the special employment security fund to the Secretary of the Treasury of the  
40 United States to be credited to the account of this state in the unemployment trust fund.

41         3. **This subsection shall only be effective in any year in which, on January first of**  
42 **such year, the unemployment compensation trust fund does not have sufficient money to**  
43 **meet the minimum level of debt service required for the following twelve months, and only**  
44 **when the emergency fee authorized under this subsection is necessary to prevent default**  
45 **on outstanding debt obligations incurred as a result of payment of benefits required under**  
46 **this chapter.** In addition to all other contributions due under this chapter, if the fund is utilizing  
47 moneys from the proceeds of credit instruments issued under section 288.330, or from the  
48 moneys advanced under financial agreements under subdivision (17) of subsection 2 of section  
49 288.330, or a combination of credit instrument proceeds and moneys advanced under financial  
50 agreements each employer shall be assessed a credit instrument and financing agreement  
51 **emergency repayment [surcharge] fee.** [The total of such surcharge shall be calculated as an  
52 amount up to one hundred fifty percent of the amount required in the twelve-month period  
53 following the due date for the payment of such surcharge for the payment of the principal,  
54 interest, and administrative expenses related to such credit instruments, or in the case of financial  
55 agreements for the payment of principal, interest, and administrative expenses related to such  
56 financial agreements, or in the case of a combination of credit instruments and financial  
57 agreements for the payment of principal, interest, and administrative expenses for both. Each  
58 employer's proportionate share shall be the product obtained by multiplying the total statewide  
59 credit instrument and financing agreement repayment surcharge by a number obtained by

60 dividing the employer's total taxable wages for the prior year by the total taxable wages in the  
61 state for the prior year.] **The credit instrument and financing agreement emergency**  
62 **repayment fee shall be calculated as a percentage of the tax rate applied under this**  
63 **chapter. The credit instrument and financing agreement emergency repayment fee shall**  
64 **be calculated at a level sufficient to meet the minimum debt service obligations for the**  
65 **following twelve months, when combined with the January first unemployment**  
66 **compensation trust fund balance. The total credit instrument and financing agreement**  
67 **emergency repayment fee shall not exceed an additional ten percent for an employer's tax**  
68 **rate.** Each employer shall be notified of the amount due under this section by (January) thirtieth  
69 of each year and such amount shall be considered delinquent thirty days thereafter.

288.190. 1. The director shall designate an impartial referee or referees to hear and  
2 decide disputed determinations, claims referred pursuant to subsection 2 of section 288.070, and  
3 petitions for reassessment. No employee of the division shall participate on behalf of the  
4 division in any case in which the division employee is an interested party.

5 2. The manner in which disputed determinations, referred claims, and petitions for  
6 reassessment shall be presented and the conduct of hearings shall be in accordance with  
7 regulations prescribed by the division for determining the rights of the parties, whether or not  
8 such regulations conform to common law or statutory rules of evidence and other technical rules  
9 of procedure. When the same or substantially similar evidence is relevant and material to the  
10 matters in issue in claims by more than one individual or in claims by a single individual in  
11 respect to two or more weeks of unemployment, the same time and place for considering each  
12 such claim or claims may be fixed, hearings thereon jointly conducted, a single record of the  
13 proceedings made, and evidence introduced with respect to one proceeding considered as  
14 introduced in the others, if in the judgment of the appeals tribunal or the commission having  
15 jurisdiction of the proceeding such consolidation would not be prejudicial to any party. A full  
16 and complete record shall be kept of all proceedings in connection with a disputed determination,  
17 referred claim, or petition for reassessment. The appeals tribunal shall include in the record and  
18 consider as evidence all records of the division that are material to the issues. All testimony at  
19 any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

20 3. Unless an appeal on a disputed determination or referred claim is withdrawn, an  
21 appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm,  
22 modify, or reverse the determination of the deputy, or shall remand the matter to the deputy with  
23 directions. In addition, in any case wherein the appellant, after having been duly notified of the  
24 date, time, and place of the hearing, shall fail to appear at such hearing, the appeals tribunal may  
25 enter an order dismissing the appeal. The director may transfer to another appeals tribunal the  
26 proceedings on an appeal determination before an appeals tribunal. The parties shall be duly

27 notified of an appeals tribunal's decision or order, together with its reason therefor, which shall  
28 be deemed to be the final decision or order of the division unless, within thirty days after the date  
29 of notification or mailing of such decision, further appeal is initiated pursuant to section 288.200;  
30 except that, within thirty days of either notification or mailing of the appeals tribunal's decision  
31 or order, the appeals tribunal, on its own motion, may reconsider any decision or order when it  
32 appears that such reconsideration is essential to the accomplishment of the object and purpose  
33 of this law.

34 4. Unless a petition for reassessment is withdrawn or is allowed without a hearing, the  
35 petitioners shall be given a reasonable opportunity for a fair hearing before an appeals tribunal  
36 upon each such petition. The appeals tribunal shall promptly notify the interested parties of its  
37 decision upon such petition together with its reason therefor. In addition, in any case wherein  
38 the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail  
39 to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. In the  
40 absence of the filing of an application for review of such decision, the decision, whether it results  
41 in a reassessment or otherwise, shall become final thirty days after the date of notification or  
42 mailing thereof; except that, within thirty days of either notification or mailing of the appeals  
43 tribunal's decision or order, the appeals tribunal, on its own motion, may reconsider any decision  
44 or order when it appears that such reconsideration is essential to the accomplishment of the  
45 object and purposes of this law.

46 5. Any party subject to any decision of an appeals tribunal pursuant to this chapter has  
47 a right to counsel and **the right to designate a representative, which may be a certified public**  
48 **accountant, and** shall be notified prior to a hearing conducted pursuant to this chapter that a  
49 decision of the appeals tribunal is presumptively conclusive for the purposes of this chapter as  
50 provided in section 288.200.

288.310. 1. There is hereby created in the state treasury a special fund to be known as  
2 the "Special Employment Security Fund". All interest and penalties collected under the  
3 provisions of this law, including moneys collected pursuant to section 288.128 for the payment  
4 of interest due on federal advances received pursuant to section 288.330, or subject to  
5 appropriation, or supplemental appropriation, by the general assembly, amounts received  
6 pursuant to the credit instrument and financing agreement **emergency** repayment [surcharge] **fee**  
7 pursuant to section 288.128 related to the payment of principal, interest, and administrative  
8 expenses related to credit instruments issued under section 288.330, or the payment of the  
9 principal, interest, and administrative expenses related to financial agreements under subdivision  
10 (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and  
11 administrative expenses related to a combination of credit instruments and financial agreements  
12 shall be paid into this fund. The moneys collected pursuant to section 288.128 shall be used for

13 the payment of interest due on federal advances received pursuant to section 288.330. Amounts  
14 received pursuant to the credit instrument and financing agreement **emergency** repayment  
15 [surcharge] **fee** pursuant to subsection 3 of section 288.128 shall be used, following  
16 appropriation by the general assembly and exclusively for payment of principal, interest, and  
17 administrative expenses related to credit instruments issued under that section, or the payment  
18 of principal, interest, and administrative expenses related to financial agreements under  
19 subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and  
20 administrative expenses related to a combination of credit instruments and financial agreements.  
21 Such moneys, except for moneys collected pursuant to section 288.128, shall not be expended  
22 or available for expenditure in any manner which would permit their substitution for, or a  
23 corresponding reduction in, federal funds which would in the absence of such money be available  
24 to finance expenditures for the administration of the employment security law, but nothing in this  
25 section shall prevent such moneys, except for moneys collected pursuant to section 288.128,  
26 from being used as a revolving fund, to cover expenditures, necessary and proper under the law,  
27 for which federal funds have been duly requested but not yet received, subject to the charging  
28 of such expenditures against such funds when received. Subject to the approval of the director  
29 of the department of labor and industrial relations, the moneys in this fund, except for moneys  
30 collected pursuant to section 288.128, shall be used by the department of labor and industrial  
31 relations for the payment of costs of administration which are found not to have been properly  
32 and validly chargeable against federal grants or other funds received for or in the unemployment  
33 compensation administration fund. Such moneys, except for moneys collected pursuant to  
34 section 288.128, shall be available either to satisfy the obligations incurred by the department  
35 of labor and industrial relations for the division directly or by requesting the board of fund  
36 commissioners to transfer the required amount from the special employment security fund to the  
37 unemployment compensation administration fund. The board of fund commissioners shall upon  
38 receipt of a written request of the department of labor and industrial relations make any such  
39 transfer. No expenditures of this fund or transfer herein provided, except for moneys collected  
40 pursuant to section 288.128, shall be made unless and until the director of the department of  
41 labor and industrial relations finds that no other funds are available or can properly be used to  
42 finance such expenditures, except that as hereinafter authorized expenditures from such fund  
43 may be made for the purpose of acquiring lands and buildings, or for the erection of buildings  
44 on lands so acquired, which are deemed necessary by the director of the department of labor and  
45 industrial relations for the proper administration of this law. The director of the department of  
46 labor and industrial relations shall order the transfer of such funds or the payment of any such  
47 obligation and such funds shall be paid by the state treasurer on requisitions drawn by the  
48 director of the department of labor and industrial relations directing the state auditor to issue his

49 or her warrant therefor. Any such warrant shall be drawn by the state auditor based upon bills  
50 of particulars and vouchers certified by an officer or employee designated by the director of the  
51 department of labor and industrial relations. Such certification shall among other things include  
52 a duly certified copy of the director of the department of labor and industrial relations' findings  
53 hereinbefore referred to. The moneys in this fund, except for moneys collected pursuant to  
54 section 288.128, are hereby specifically made available to replace, within a reasonable time, any  
55 moneys received by this state pursuant to section 302 of the Federal Social Security Act (42  
56 U.S.C.A. Sec. 502), as amended, which, because of any action or contingency, have been lost  
57 or have been expended for purposes other than, or in amounts in excess of, those necessary for  
58 the proper administration of the employment security law. The moneys in this fund shall be  
59 continuously available to the director of the department of labor and industrial relations for  
60 expenditure in accordance with the provisions of this section and shall not lapse at any time or  
61 be transferred to any other fund except as herein provided.

62         2. The director of the department of labor and industrial relations, subject to the approval  
63 of the board of public buildings, is authorized and empowered to use all or any part of the funds  
64 in the special employment security fund, except for moneys collected pursuant to section  
65 288.128, for the purpose of acquiring suitable office space for the division by way of purchase,  
66 lease, contract or in any other manner, including the right to use such funds or any part thereof  
67 to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist  
68 in financing the construction of any building erected by the state of Missouri or any of its  
69 agencies wherein available space will be provided for the division under lease or contract  
70 between the department of labor and industrial relations and the state of Missouri or such other  
71 agency. The director of the department of labor and industrial relations may transfer from the  
72 unemployment compensation administration fund to the special employment security fund  
73 amounts not exceeding funds specifically available to the department of labor and industrial  
74 relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings  
75 acquired for its use until such time as the full amount of the purchase price of such land and  
76 buildings and such cost of repair and maintenance thereof as was expended from the special  
77 employment security fund has been returned to such fund.

78         3. The director of the department of labor and industrial relations may also transfer from  
79 the unemployment compensation administration fund to the special employment security fund  
80 amounts not exceeding funds specifically available to the department of labor and industrial  
81 relations for that purpose, equivalent to the fair reasonable rental value of space used by the  
82 department of labor and industrial relations in any building erected by the state of Missouri or  
83 any of its agencies until such time as the department of labor and industrial relations'  
84 proportionate amount of the purchase price of such building and the department of labor and

85 industrial relations' proportionate amount of such costs of repair and maintenance thereof as was  
86 expended from the special employment security fund has been returned to such fund.

288.330. 1. Benefits shall be deemed to be due and payable only to the extent that  
2 moneys are available to the credit of the unemployment compensation fund and neither the state  
3 nor the division shall be liable for any amount in excess of such sums. The governor is  
4 authorized to apply for an advance to the state unemployment fund and to accept the  
5 responsibility for the repayment of such advance in order to secure to this state and its citizens  
6 the advantages available under the provisions of federal law.

7 2. (1) The purpose of this subsection is to provide a method of providing funds for the  
8 payment of unemployment benefits or maintaining an adequate fund balance in the  
9 unemployment compensation fund, and as an alternative to borrowing or obtaining advances  
10 from the federal unemployment trust fund or for refinancing those loans or advances.

11 (2) For the purposes of this subsection, "credit instrument" means any type of borrowing  
12 obligation issued under this section, including any bonds, commercial line of credit note, tax  
13 anticipation note or similar instrument.

14 (3) (a) There is hereby created for the purposes of implementing the provisions of this  
15 subsection a body corporate and politic to be known as the "Board of Unemployment Fund  
16 Financing". The powers of the board shall be vested in five board members who shall be the  
17 governor, lieutenant governor, attorney general, director of the department of labor, and the  
18 commissioner of administration. The board shall have all powers necessary to effectuate its  
19 purposes including, without limitation, the power to provide a seal, keep records of its  
20 proceedings, and provide for professional services. The governor shall serve as chair, the  
21 lieutenant governor shall serve as vice chair, and the commissioner of administration shall serve  
22 as secretary. Staff support for the board shall be provided by the commissioner of  
23 administration;

24 (b) Notwithstanding the provisions of any other law to the contrary:

25 a. No officer or employee of this state shall be deemed to have forfeited or shall forfeit  
26 his or her office or employment by reason of his or her acceptance of an appointment as a board  
27 member or for his or her service to the board;

28 b. Board members shall receive no compensation for the performance of their duties  
29 under this subsection, but each commissioner shall be reimbursed from the funds of the  
30 commission for his or her actual and necessary expenses incurred in carrying out his or her  
31 official duties under this subsection.

32 (c) In the event that any of the board members or officers of the board whose signatures  
33 or facsimile signatures appear on any credit instrument shall cease to be board members or  
34 officers before the delivery of such credit instrument, their signatures or facsimile signatures

35 shall be valid and sufficient for all purposes as if such board members or officers had remained  
36 in office until delivery of such credit instrument.

37 (d) Neither the board members executing the credit instruments of the board nor any  
38 other board members shall be subject to any personal liability or accountability by reason of the  
39 issuance of the credit instruments.

40 (4) The board is authorized, by offering for public negotiated sale, to issue, sell, and  
41 deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by  
42 the board, which shall mature no later than [three] **fifteen** years after issuance, in the name of the  
43 board in an amount determined by the board not to exceed a total of four hundred fifty million  
44 dollars, less the principal amount of any financing agreement entered into under subdivision (17)  
45 of this subsection, for the purposes set forth in subdivision (1) of this subsection. Such credit  
46 instrument may only be issued upon the approval of a resolution authorizing such issuance by  
47 a simple majority of the members of the board, with no other proceedings required. [No credit  
48 instrument may be outstanding hereunder after January 15, 2008.]

49 (5) The board shall provide for the payment of the principal of the credit instruments,  
50 any redemption premiums, the interest on the credit instruments, and the costs attributable to the  
51 credit instruments being issued or outstanding as provided in this subsection [and in section  
52 288.310]. Unless the board directs otherwise, the credit instrument shall be repaid in the same  
53 time frame and in the same amounts as would be required for loans issued pursuant to 42 U.S.C.  
54 Section 1321; however, in no case shall credit instruments be outstanding for more than [three]  
55 **fifteen** years [and further provided that no credit instruments shall be outstanding hereunder after  
56 January 15, 2008].

57 (6) The board may irrevocably pledge money received from the credit instrument and  
58 financing agreement **emergency** repayment [surcharge] **fee** under subsection 3 of section  
59 288.128, and other money legally available to it, which is deposited in an account created for  
60 credit instrument repayment in the special employment security fund, provided that the general  
61 assembly has first appropriated moneys received from such [surcharge] **fee** and other moneys  
62 deposited in such account for the payment of credit instruments.

63 (7) Credit instruments issued under this section shall not constitute debts of this state or  
64 of the board or any agency, political corporation, or political subdivision of this state and are not  
65 a pledge of the faith and credit of this state, the board or of any of those governmental entities  
66 and shall not constitute an indebtedness within the meaning of any constitutional or statutory  
67 limitation upon the incurring of indebtedness. The credit instruments are payable only from  
68 revenue provided for under this chapter. The credit instruments shall contain a statement to the  
69 effect that:

70 (a) Neither the state nor the board nor any agency, political corporation, or political  
71 subdivision of the state shall be obligated to pay the principal or interest on the credit instruments  
72 except as provided by this section; and

73 (b) Neither the full faith and credit nor the taxing power of the state nor the board nor  
74 any agency, political corporation, or political subdivision of the state is pledged to the payment  
75 of the principal, premium, if any, or interest on the credit instruments.

76 (8) The board pledges and agrees with the owners of any credit instruments issued under  
77 this section that the state will not limit or alter the rights vested in the board to fulfill the terms  
78 of any agreements made with the owners or in any way impair the rights and remedies of the  
79 owners until the credit instruments are fully discharged.

80 (9) The board may prescribe the form, details, and incidents of the credit instruments and  
81 make such covenants that in its judgment are advisable or necessary to properly secure the  
82 payment thereof. If such credit instruments shall be authenticated by the bank or trust company  
83 acting as registrar for such by the manual signature of a duly authorized officer or employee  
84 thereof, the duly authorized officers of the board executing and attesting such credit instruments  
85 may all do so by facsimile signature provided such signatures have been duly filed as provided  
86 in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo,  
87 when duly authorized by resolution of the board, and the provisions of section 108.175, RSMo,  
88 shall not apply to such credit instruments. The board may provide for the flow of funds and the  
89 establishment and maintenance of separate accounts within the special employment security  
90 fund, including the interest and sinking account, the reserve account, and other necessary  
91 accounts, and may make additional covenants with respect to the credit instruments in the  
92 documents authorizing the issuance of credit instruments including refunding credit instruments.  
93 The resolutions authorizing the issuance of credit instruments may also prohibit the further  
94 issuance of credit instruments or other obligations payable from appropriated moneys or may  
95 reserve the right to issue additional credit instruments to be payable from appropriated moneys  
96 on a parity with or subordinate to the lien and pledge in support of the credit instruments being  
97 issued and may contain other provisions and covenants as determined by the board, provided that  
98 any terms, provisions or covenants provided in any resolution of the board shall not be  
99 inconsistent with the provisions of this section.

100 (10) The board may issue credit instruments to refund all or any part of the outstanding  
101 credit instruments issued under this section including matured but unpaid interest. As with other  
102 credit instruments issued under this section, such refunding credit instruments may bear interest  
103 at a fixed or variable rate as determined by the board. [No such refunding credit instruments may  
104 be outstanding for more than three years or after January 15, 2008.]



105 (11) The credit instruments issued by the board, any transaction relating to the credit  
106 instruments, and profits made from the sale of the credit instruments are free from taxation by  
107 the state or by any municipality, court, special district, or other political subdivision of the state.

108 (12) As determined necessary by the board the proceeds of the credit instruments less  
109 the cost of issuance shall be placed in the state's unemployment compensation fund and may be  
110 used for the purposes for which that fund may otherwise be used. If those net proceeds are not  
111 placed immediately in the unemployment compensation fund they shall be held in the special  
112 employment security fund in an account designated for that purpose until they are transferred to  
113 the unemployment compensation fund provided that the proceeds of refunding credit instruments  
114 may be placed in an escrow account or such other account or instrument as determined necessary  
115 by the board.

116 (13) The board may enter into any contract or agreement deemed necessary or desirable  
117 to effectuate cost-effective financing hereunder. Such agreements may include credit  
118 enhancement, credit support, or interest rate agreements including, but not limited to,  
119 arrangements such as municipal bond insurance; surety bonds; tax anticipation notes; liquidity  
120 facilities; forward agreements; tender agreements; remarketing agreements; option agreements;  
121 interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase  
122 agreements. Any fees or costs associated with such agreements shall be deemed administrative  
123 expenses [for the purposes of calculating the credit instrument and financing agreement  
124 repayment surcharge under subsection 3 of section 288.128]. The board, with consideration of  
125 all other costs being equal, shall give preference to Missouri-headquartered financial institutions,  
126 or those out-of-state-based financial institutions with at least one hundred Missouri employees.

127 (14) To the extent this section conflicts with other laws the provisions of this section  
128 prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298, RSMo.

129 (15) If the United States Secretary of Labor holds that a provision of this subsection or  
130 of any provision related to the levy or use of the credit instrument and financial agreement  
131 repayment surcharge does not conform with a federal statute or would result in the loss to the  
132 state of any federal funds otherwise available to it the board, in cooperation with the department  
133 of labor and industrial relations, may administer this subsection, and other provisions related to  
134 the credit instrument and financial agreement **emergency** repayment [surcharge] **fee**, to conform  
135 with the federal statute until the general assembly meets in its next regular session and has an  
136 opportunity to amend this subsection or other sections, as applicable.

137 (16) Nothing in this chapter shall be construed to prohibit the officials of the state from  
138 borrowing from the government of the United States in order to pay unemployment benefits  
139 under subsection 1 of this section or otherwise.

140 (17) (a) As used in this subdivision the term "lender" means any state or national bank.

141 (b) The board is authorized to enter financial agreements with any lender for the  
142 purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements  
143 in whole or in part, upon the approval of the simple majority of the members of the board of a  
144 resolution authorizing such financial agreements, with no other proceedings required. The total  
145 amount of the outstanding obligation under all such agreements shall not exceed the difference  
146 of four hundred fifty million dollars and the principal amount of credit instruments issued under  
147 this subsection. In no instance shall the outstanding obligation under any financial agreement  
148 continue for more than [three] **ten** years[, and no such financial agreement, whether entered into  
149 for refinancing purposes or otherwise, shall be outstanding after January 15, 2008]. Repayment  
150 of obligations to lenders shall be made from the special employment security fund, section  
151 288.310, **or the principal incurred due to the payment of unemployment benefits may be**  
152 **repaid from the unemployment compensation trust fund** subject to appropriation by the  
153 general assembly.

154 (c) Financial agreements entered into under this subdivision shall not constitute debts  
155 of this state or of the board or any agency, political corporation, or political subdivision of this  
156 state and are not a pledge of the faith and credit of this state, the board or of any of those  
157 governmental entities and shall not constitute an indebtedness within the meaning of any  
158 constitutional or statutory limitation upon the incurring of indebtedness. The financial  
159 agreements are payable only from revenue provided for under this chapter. The financial  
160 agreements shall contain a statement to the effect that:

161 a. Neither the state nor the board nor any agency, political corporation, or political  
162 subdivision of the state shall be obligated to pay the principal or interest on the financial  
163 agreements except as provided by this section; and

164 b. Neither the full faith and credit nor the taxing power of the state nor the board nor any  
165 agency, political corporation, or political subdivision of the state is pledged to the payment of  
166 the principal, premium, if any, or interest on the financial agreements.

167 (d) Neither the board members executing the financial agreements nor any other board  
168 members shall be subject to any personal liability or accountability by reason of the execution  
169 of such financial agreements.

170 (e) The board may prescribe the form, details and incidents of the financing agreements  
171 and make such covenants that in its judgment are advisable or necessary to properly secure the  
172 payment thereof provided that any terms, provisions or covenants provided in any such financing  
173 agreement shall not be inconsistent with the provisions of this section. If such financing  
174 agreements shall be authenticated by the bank or trust company acting as registrar for such by  
175 the manual signature of a duly authorized officer or employee thereof, the duly authorized

176 officers of the board executing and attesting such financing agreements may all do so by  
177 facsimile signature provided such signatures have been duly filed as provided in the uniform  
178 facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly  
179 authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not  
180 apply to such financing agreements.

181 (18) The commission may issue credit instruments to refund all or any part of the  
182 outstanding borrowing issued under this section including matured but unpaid interest.

183 (19) The credit instruments issued by the commission, any transaction relating to the  
184 credit instruments, and profits made from the issuance of credit are free from taxation by the  
185 state or by any municipality, court, special district, or other political subdivision of the state.

186 3. In event of the suspension of this law, any unobligated funds in the unemployment  
187 compensation fund, and returned by the United States Treasurer because such Federal Social  
188 Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the  
189 division until the legislature shall provide for the disposition thereof. In event no disposition is  
190 made by the legislature at the next regular meeting subsequent to suspension of said law, then  
191 all unobligated funds shall be returned ratably to those who contributed thereto.

192 4. For purposes of this section, as contained in senate substitute no. 2 for senate  
193 committee substitute for house substitute for house committee substitute for house bill nos. 1268  
194 and 1211, ninety-second general assembly, second regular session, the revisor of statutes shall  
195 renumber subdivision (16) of subsection 2 of such section as subdivision (17) of such subsection  
196 and renumber subdivision (17) of subsection 2 of such section as subdivision (16) of such  
197 subsection.