

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 319
93RD GENERAL ASSEMBLY

Reported from the Committee on Workforce Development and Workplace Safety, April 13, 2005 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 319 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1305L.05C

AN ACT

To repeal sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330, RSMo, and to enact in lieu thereof thirteen new sections relating to unemployment insurance.

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,
2 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330, RSMo, are repealed and thirteen
3 new sections enacted in lieu thereof, to be known as sections 288.035, 288.036, 288.038,
4 288.045, 288.050, 288.060, 288.110, 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330,
5 to read as follows:

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

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.

10 deemed to be in employment if the for-hire [common or contract vehicle] **motor** carrier is an
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 or attempt to adulterate a**
87 **test for alcohol or controlled substances, as defined by section 195.010, RSMo,**
88 **administered by or at the request of the employer shall be considered misconduct**
89 **connected with the claimant's work. If a deputy finds that a claimant has been discharged**
90 **under this subsection, such claimant shall be disqualified for waiting week credit and**
91 **benefits under the provisions of 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.**

87 **8. This section shall become effective January 1, 2006.**

288.120. 1. On each June thirtieth, or within a reasonable time thereafter as may be
 2 fixed by regulation, the balance of an employer's experience rating account, except an employer
 3 participating in a shared work plan under section 288.500, shall determine his contribution rate
 4 for the following calendar year as determined by the following table:

5 Percentage the Employer's Experience Rating
 6 Account is to that Employer's Average Annual Payroll
 7

8 Equals or Exceeds	Less Than	Contribution Rate
9 -----	-12.0	6.0%
10 -12.0	-11.0	5.8%
11 -11.0	-10.0	5.6%
12 -10.0	-9.0	5.4%
13 -9.0	-8.0	5.2%
14 -8.0	-7.0	5.0%
15 -7.0	-6.0	4.8%
16 -6.0	-5.0	4.6%
17 -5.0	-4.0	4.4%
18 -4.0	-3.0	4.2%
19 -3.0	-2.0	4.0%
20 -2.0	-1.0	3.8%
21 -1.0	0	3.6%
22 0	2.5	2.7%
23 2.5	3.5	2.6%
24 3.5	4.5	2.5%
25 4.5	5.0	2.4%
26 5.0	5.5	2.3%
27 5.5	6.0	2.2%
28 6.0	6.5	2.1%
29 6.5	7.0	2.0%
30 7.0	7.5	1.9%
31 7.5	8.0	1.8%
32 8.0	8.5	1.7%
33 8.5	9.0	1.6%

34	9.0	9.5	1.5%
35	9.5	10.0	1.4%
36	10.0	10.5	1.3%
37	10.5	11.0	1.2%
38	11.0	11.5	1.1%
39	11.5	12.0	1.0%
40	12.0	12.5	0.9%
41	12.5	13.0	0.8%
42	13.0	13.5	0.6%
43	13.5	14.0	0.4%
44	14.0	14.5	0.3%
45	14.5	15.0	0.2%
46	15.0	----	0.0%

47 2. Using the same mathematical principles used in constructing the table provided in
 48 subsection 1 of this section, the following table has been constructed. The contribution rate for
 49 the following calendar year of any employer participating in a shared work plan under section
 50 288.500 during the current calendar year or any calendar year during a prior three-year period
 51 shall be determined from the balance in such employer's experience rating account as of the
 52 previous June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, from
 53 the following table:

54 Percentage the Employer's Experience Rating
 55 Account is to that Employer's Average Annual Payroll

57	Equals or Exceeds	Less Than	Contribution Rate
58	-----	-27.0	9.0%
59	-27.0	-26.0	8.8%
60	-26.0	-25.0	8.6%
61	-25.0	-24.0	8.4%
62	-24.0	-23.0	8.2%
63	-23.0	-22.0	8.0%
64	-22.0	-21.0	7.8%
65	-21.0	-20.0	7.6%
66	-20.0	-19.0	7.4%
67	-19.0	-18.0	7.2%
68	-18.0	-17.0	7.0%
69	-17.0	-16.0	6.8%

70	-16.0	-15.0	6.6%
71	-15.0	-14.0	6.4%
72	-14.0	-13.0	6.2%
73	-13.0	-12.0	6.0%
74	-12.0	-11.0	5.8%
75	-11.0	-10.0	5.6%
76	-10.0	-9.0	5.4%
77	-9.0	-8.0	5.2%
78	-8.0	-7.0	5.0%
79	-7.0	-6.0	4.8%
80	-6.0	-5.0	4.6%
81	-5.0	-4.0	4.4%
82	-4.0	-3.0	4.2%
83	-3.0	-2.0	4.0%
84	-2.0	-1.0	3.8%
85	-1.0	0	3.6%
86	0	2.5	2.7%
87	2.5	3.5	2.6%
88	3.5	4.5	2.5%
89	4.5	5.0	2.4%
90	5.0	5.5	2.3%
91	5.5	6.0	2.2%
92	6.0	6.5	2.1%
93	6.5	7.0	2.0%
94	7.0	7.5	1.9%
95	7.5	8.0	1.8%
96	8.0	8.5	1.7%
97	8.5	9.0	1.6%
98	9.0	9.5	1.5%
99	9.5	10.0	1.4%
100	10.0	10.5	1.3%
101	10.5	11.0	1.2%
102	11.0	11.5	1.1%
103	11.5	12.0	1.0%
104	12.0	12.5	0.9%
105	12.5	13.0	0.8%

106	13.0	13.5	0.6%
107	13.5	14.0	0.4%
108	14.0	14.5	0.3%
109	14.5	15.0	0.2%
110	15.0	----	0.0%

111 3. Notwithstanding the provisions of subsection 2 of section 288.090, any employer
 112 participating in a shared work plan under section 288.500 who has not had at least twelve
 113 calendar months immediately preceding the calculation date throughout which his account could
 114 have been charged with benefits shall have a contribution rate equal to the highest contribution
 115 rate in the table in subsection 2 of this section, until such time as his account has been chargeable
 116 with benefits for the period of time sufficient to enable him to qualify for a computed rate on the
 117 same basis as other employers participating in shared work plans.

118 4. Employers who have been taxed at the maximum rate pursuant to this section for two
 119 consecutive years shall have a surcharge of one-quarter percent added to their contribution rate
 120 calculated pursuant to this section **unless the balance in the trust fund as determined by**
 121 **section 288.038 is greater than or equal to four hundred fifty million dollars, then, no such**
 122 **surcharge shall be added.** In the event that an employer remains at the maximum rate pursuant
 123 to this section for a third or subsequent year, an additional surcharge of one-quarter percent shall
 124 be annually assessed **and if the balance in the trust fund as determined by section 288.038**
 125 **remains less than or equal to four hundred fifty million dollars, then, an additional**
 126 **surcharge of one-quarter percent shall be assessed,** but in no case shall this surcharge
 127 cumulatively exceed **one-half of one percent.** [Additionally, if an employer continues to remain
 128 at the maximum rate pursuant to this section an additional surcharge of one-half percent shall
 129 be assessed.] In no case shall the total surcharge assessed to any employer exceed [one and]
 130 one-half percent in any given year.

288.121. 1. On October first of each calendar year, if the average balance, less any
 2 federal advances, **or if the fund is not utilizing moneys advanced by the federal government,**
 3 **then less the principal, interest, and administrative expenses related to credit instruments**
 4 **issued under section 288.330, or the principal, interest, and administrative expenses related**
 5 **to financial agreements under subdivision (17) of section 288.330, or the principal, interest,**
 6 **and administrative expenses related to a combination of Title XII advances, credit**
 7 **instruments, and financial agreements,** of the unemployment compensation trust fund of the
 8 four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December
 9 thirty-first of the preceding calendar year) is less than four hundred fifty million dollars, then
 10 each employer's contribution rate calculated for the four calendar quarters of the succeeding
 11 calendar year shall be increased by the percentage determined from the following table:

12		Balance in Trust Fund	
13			Percentage
14	Less Than	Equals or Exceeds	of Increase
15			
16	\$450,000,000	\$400,000,000	10%
17	\$400,000,000	\$350,000,000	20%
18	\$350,000,000		30%

19
 20 [For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying
 21 the maximum contribution rate shall be increased by forty percent, instead of thirty percent as
 22 previously indicated in the table in this section.]

23 2. For calendar years 2005, 2006, and 2007, an employer's total contribution rate shall
 24 equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to
 25 the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the
 26 contribution rate plus the increase authorized under subsection 1 of this section. Any moneys
 27 overcollected beyond the actual administrative, interest and principal repayment costs for the
 28 credit instruments used shall be deposited into the state unemployment insurance trust fund and
 29 credited to the employer's experience account. The [temporary debt indebtedness assessment]
 30 **credit instrument and financing agreement emergency repayment fee** shall expire upon the
 31 last day of the fourth calendar quarter of [2007] **2020 or whenever the balance of the**
 32 **unemployment compensation fund, less any federal advances or outstanding credit**
 33 **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, **or if the fund is not utilizing moneys advanced by the federal government, then**
 3 **less the principal, interest, and administrative expenses related to credit instruments issued**
 4 **under section 288.330, or the principal, interest, and administrative expenses related to**
 5 **financial agreements under subdivision (17) of section 288.330, or the principal, interest,**
 6 **and administrative expenses related to a combination of Title XII advances, credit**
 7 **instruments, and financial agreements,** of the unemployment compensation trust fund of the
 8 four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December
 9 thirty-first of the preceding calendar year) is more than [five] **six** hundred million dollars, then
 10 each employer's contribution rate calculated for the four calendar quarters of the succeeding
 11 calendar year shall be decreased by the percentage determined from the following table:

12		Balance in Trust Fund	
13			Percentage
14	More Than	But Less Than	of Decrease

15	\$600,000,000	\$750,000,000	7%
16	\$750,000,000		12%

17

18 Notwithstanding the table in this section, if the balance in the unemployment insurance
 19 compensation trust fund as calculated in this section is more than seven hundred fifty million
 20 dollars, the percentage of decrease of the employer's contribution rate calculated for the four
 21 calendar quarters of the succeeding calendar year shall be no greater than ten percent for any
 22 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 credit instrument and financing agreement
67 emergency repayment fee shall not exceed ten percent of an employer's tax rate. Each
68 employer shall be notified of the amount due under this section by (January) thirtieth of each year
69 and such amount shall be considered delinquent thirty days thereafter.

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] **fifteen** years[, and no such financial agreement, whether entered
149 into for refinancing purposes or otherwise, shall be outstanding after January 15, 2008].
150 Repayment of obligations to lenders shall be made from the special employment security fund,
151 section 288.310, **or the principal incurred due to the payment of unemployment benefits**
152 **may be repaid from the unemployment compensation trust fund** subject to appropriation by
153 the 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.