

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1456
93RD GENERAL ASSEMBLY

Reported from the Committee on Workforce Development and Workplace Safety, February 13, 2006, with recommendation that the House Committee Substitute for House Bill No. 1456 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4598L.03C

AN ACT

To repeal sections 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.310, 288.330, 288.380, 288.381, 288.475, and 288.500, RSMo, and to enact in lieu thereof twenty new sections relating to employment, with penalty provisions.

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

Section A. Sections 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.310, 288.330, 288.380, 288.381, 288.475, and 288.500, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 288.035, 288.036, 288.038, 288.040, 288.045, 288.046, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.310, 288.330, 288.380, 288.381, 288.500, and 290.595, 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 subsection 43 of 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, or operating under a certificate issued by **the Missouri department of transportation or by** the motor carrier and railroad safety division of the department of economic development under the provisions of this chapter or by the interstate commerce commission, 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

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 or contract vehicle carrier is an organization described in section 501(c)(3) of the Internal
11 Revenue Code or any governmental 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. **For calendar year 2009 and each calendar year**
59 **thereafter, the state taxable wage base shall not increase beyond twelve thousand five**
60 **hundred dollars and** the state taxable wage base [for each calendar year thereafter] shall be
61 determined by the preceding September thirtieth balance of the unemployment compensation
62 trust fund, less any outstanding federal Title XII advances received pursuant to section 288.330,
63 [or if the fund is not utilizing moneys advanced by the federal government, then less the
64 principal, interest, and administrative expenses related to credit instruments issued under section
65 288.330, or the principal, interest, and administrative expenses related to financial agreements
66 under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and
67 administrative expenses related to a combination of Title XII advances, credit instruments, and
68 financial agreements] **less the principal, interest, and administrative expenses related to any**
69 **credit instrument issued under section 288.030, and less the principal, interest, and**
70 **administrative expenses related to any financial agreements under subdivision (17) of**
71 **subsection 2 of section 288.330.** When the September thirtieth unemployment compensation

72 trust fund balance[, or, if the average balance, less any federal advances of the unemployment
73 compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March
74 thirty-first, and December thirty-first of the preceding calendar year) is less any outstanding
75 federal Title XII advances received pursuant to section 288.330,] **as so determined** is:

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

78 (2) Six hundred fifty million or more, then the state taxable wage base for the subsequent
79 calendar year shall be decreased by five hundred dollars. In no event, however, shall the state
80 taxable wage base increase beyond twelve thousand **five hundred** dollars, or decrease to less
81 than seven thousand dollars. [For calendar year 2009, the tax wage base shall be twelve
82 thousand five hundred dollars. For calendar year 2010 and each calendar year thereafter, in no
83 event shall the state taxable wage base increase beyond thirteen thousand dollars, or decrease to
84 less than seven thousand dollars.] **In any calendar year subsequent to August 28, 2006, when
85 the September thirtieth balance in the unemployment compensation trust fund, less any
86 outstanding federal Title XII advances received under section 288.330, or if the fund is not
87 utilizing moneys advanced by the federal government, then less the principal, interest, and
88 administrative expenses related to credit instruments issued under section 288.330, or the
89 principal, interest, and administrative expenses related to financial agreements under
90 subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and
91 administrative expenses related to a combination of Title XII advances, credit instruments,
92 and financial agreements, exceeds five hundred million dollars, the state taxable wage base
93 for the next calendar year shall not increase beyond eleven thousand dollars.**

94

95 For any calendar year, the state taxable wage base shall not be reduced to less than that part of
96 the remuneration which is subject to a tax under a federal law imposing a tax against which
97 credit may be taken for contributions required to be paid into a state unemployment
98 compensation trust fund. Nothing in this section shall be construed to prevent the wage base
99 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] **four** percent of the [total] **average quarterly** wages
8 paid to an eligible insured worker during [that quarter] **the two highest quarters** of the worker's
9 base period [in which the worker's wages were the highest, but the maximum weekly benefit

10 amount shall not exceed two hundred seventy dollars in calendar year 2006 and the maximum
11 weekly benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With
12 respect to initial claims filed during calendar year 2008 and each calendar year thereafter, the
13 "maximum weekly benefit amount" means four percent of the total wages paid to an eligible
14 insured worker during the average of the two highest quarters of the worker's base period, but
15 the maximum weekly benefit amount shall not exceed three hundred dollars in calendar year
16 2008, three hundred ten dollars in calendar year 2009, three hundred twenty dollars in calendar
17 year 2010, and each calendar year thereafter]. **Beginning in calendar year 2006 and**
18 **continuing each calendar year thereafter, the maximum weekly benefit amount shall not**
19 **exceed two hundred fifty dollars if the balance of the unemployment compensation trust**
20 **fund is less than or equal to four hundred million dollars. Beginning on January first of**
21 **the year following the year in which the balance in the unemployment compensation trust**
22 **fund exceeds four hundred million dollars, the maximum weekly benefit amount shall**
23 **increase to two hundred seventy dollars. In each subsequent year in which the**
24 **unemployment compensation trust fund balance exceeds four hundred million dollars the**
25 **maximum weekly benefit amount shall increase by ten dollars, except in no case shall the**
26 **weekly 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 subsection 2 of section 288.330, or the principal, interest, and administrative**
34 **expenses related to a combination of Title XII advances, credit instruments, and financial**
35 **agreements. If such benefit amount is not a multiple of one dollar, such amount shall be**
36 **reduced to the nearest lower full dollar amount.**

288.040. 1. A claimant who is unemployed and has been determined to be an insured
2 worker shall be eligible for benefits for any week only if the deputy finds that:
3 (1) The claimant has registered for work at and thereafter has continued to report at an
4 employment office in accordance with such regulations as the division may prescribe;
5 (2) The claimant is able to work and is available for work. No person shall be deemed
6 available for work unless such person has been and is actively and earnestly seeking work. Upon
7 the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter,
8 the deputy shall notify each claimant of the number of work search contacts required to constitute
9 an active search for work. **The division shall require each claimant who is required to report**
10 **in person under subdivision (3) of subsection 1 of this section to certify, no later than the**

11 **time of each four-week reporting, in the format required by the division, work search**
12 **information. The division shall establish by rule information to be reported by the**
13 **claimant and procedures for verifying the accuracy of such claimant certification.** No
14 person shall be considered not available for work, pursuant to this subdivision, solely because
15 he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be
16 ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

17 (a) The claimant is participating in training approved pursuant to Section 236 of the
18 Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

19 (b) The claimant is temporarily unemployed through no fault of his or her own and has
20 a definite recall date within eight weeks of his or her first day of unemployment; however, upon
21 application of the employer responsible for the claimant's unemployment, such eight-week period
22 may be extended not to exceed a total of sixteen weeks at the discretion of the director;

23 (3) The claimant has reported in person to an office of the division as directed by the
24 deputy, but at least once every four weeks, except that a claimant shall be exempted from the
25 reporting requirement of this subdivision if:

26 (a) The claimant is claiming benefits in accordance with division regulations dealing
27 with partial or temporary total unemployment; or

28 (b) The claimant is temporarily unemployed through no fault of his or her own and has
29 a definite recall date within eight weeks of his or her first day of unemployment; or

30 (c) The claimant resides in a county with an unemployment rate, as published by the
31 division, of ten percent or more and in which the county seat is more than forty miles from the
32 nearest division office;

33 (d) The director of the division of employment security has determined that the claimant
34 [belongs to a group or class of workers whose opportunities for reemployment will not be
35 enhanced by reporting in person, or] is prevented from reporting due to emergency conditions
36 that limit access by the general public to an office that serves the area where the claimant resides,
37 but only during the time such circumstances exist.

38

39 Ineligibility pursuant to this subdivision shall begin on the first day of the week which the
40 claimant was scheduled to claim and shall end on the last day of the week preceding the week
41 during which the claimant does report in person to the division's office;

42 (4) Prior to the first week of a period of total or partial unemployment for which the
43 claimant claims benefits he or she has been totally or partially unemployed for a waiting period
44 of one week. No more than one waiting week will be required in any benefit year. During
45 calendar year 2008 and each calendar year thereafter, the one-week waiting period shall become
46 compensable once his or her remaining balance on the claim is equal to or less than the
47 compensable amount for the waiting period. No week shall be counted as a week of total or

48 partial unemployment for the purposes of this subsection unless it occurs within the benefit year
49 which includes the week with respect to which the claimant claims benefits;

50 (5) The claimant has made a claim for benefits;

51 (6) The claimant is participating in reemployment services, such as job search assistance
52 services, as directed by the deputy if the claimant has been determined to be likely to exhaust
53 regular benefits and to need reemployment services pursuant to a profiling system established
54 by the division, unless the deputy determines that:

55 (a) The individual has completed such reemployment services; or

56 (b) There is justifiable cause for the claimant's failure to participate in such
57 reemployment services.

58

59 **The claimant shall be registered with the "GreatHires.Org" search agency or its successor**
60 **agency upon filing for unemployment compensation, and check for job availability with**
61 **the search agency during their in-person reporting under subdivision (3) of this subsection.**
62 **The claimant shall be required to maintain an active work registration to maintain**
63 **eligibility for benefits. Registering with "GreatHires.Org" or its successor agency shall**
64 **constitute completion of the requirements of subdivision (3) of this subsection.**

65 2. A claimant shall be ineligible for waiting week credit or benefits for any week for
66 which the deputy finds he or she is or has been suspended by his or her most recent employer for
67 misconduct connected with his or her work. Suspensions of four weeks or more shall be treated
68 as discharges.

69 3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of
70 section 288.034, shall be payable in the same amount, on the same terms and subject to the same
71 conditions as compensation payable on the basis of other service subject to this law; except that:

72 (a) With respect to service performed in an instructional, research, or principal
73 administrative capacity for an educational institution, benefits shall not be paid based on such
74 services for any week of unemployment commencing during the period between two successive
75 academic years or terms, or during a similar period between two regular but not successive terms,
76 or during a period of paid sabbatical leave provided for in the individual's contract, to any
77 individual if such individual performs such services in the first of such academic years (or terms)
78 and if there is a contract or a reasonable assurance that such individual will perform services in
79 any such capacity for any educational institution in the second of such academic years or terms;

80 (b) With respect to services performed in any capacity (other than instructional, research,
81 or principal administrative capacity) for an educational institution, benefits shall not be paid on
82 the basis of such services to any individual for any week which commences during a period
83 between two successive academic years or terms if such individual performs such services in the

84 first of such academic years or terms and there is a contract or a reasonable assurance that such
85 individual will perform such services in the second of such academic years or terms;

86 (c) With respect to services described in paragraphs (a) and (b) of this subdivision,
87 benefits shall not be paid on the basis of such services to any individual for any week which
88 commences during an established and customary vacation period or holiday recess if such
89 individual performed such services in the period immediately before such vacation period or
90 holiday recess, and there is reasonable assurance that such individual will perform such services
91 immediately following such vacation period or holiday recess;

92 (d) With respect to services described in paragraphs (a) and (b) of this subdivision,
93 benefits payable on the basis of services in any such capacity shall be denied as specified in
94 paragraphs (a), (b), and (c) of this subdivision to any individual who performed such services at
95 an educational institution while in the employ of an educational service agency, and for this
96 purpose the term "educational service agency" means a governmental agency or governmental
97 entity which is established and operated exclusively for the purpose of providing such services
98 to one or more educational institutions.

99 (2) If compensation is denied for any week pursuant to paragraph (b) or (d) of
100 subdivision (1) of this subsection, to any individual performing services at an educational
101 institution in any capacity (other than instructional, research or principal administrative capacity),
102 and such individual was not offered an opportunity to perform such services for the second of
103 such academic years or terms, such individual shall be entitled to a retroactive payment of the
104 compensation for each week for which the individual filed a timely claim for compensation and
105 for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1)
106 of this subsection.

107 4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work
108 benefits for any week for which he or she is receiving or has received remuneration exceeding
109 his or her weekly benefit amount or shared work benefit amount in the form of:

110 (a) Compensation for temporary partial disability pursuant to the workers' compensation
111 law of any state or pursuant to a similar law of the United States;

112 (b) A governmental or other pension, retirement or retired pay, annuity, or other similar
113 periodic payment which is based on the previous work of such claimant to the extent that such
114 payment is provided from funds provided by a base period or chargeable employer pursuant to
115 a plan maintained or contributed to by such employer; but, except for such payments made
116 pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding
117 provisions of prior law), the provisions of this paragraph shall not apply if the services performed
118 for such employer by the claimant after the beginning of the base period (or remuneration for
119 such services) do not affect eligibility for or increase the amount of such pension, retirement or
120 retired pay, annuity or similar payment.

121 (2) If the remuneration referred to in this subsection is less than the benefits which would
122 otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible,
123 benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one
124 dollar, such amount shall be lowered to the next multiple of one dollar.

125 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a
126 claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act
127 of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant
128 to such federal law shall be deductible from the amount of benefits received pursuant to this
129 chapter.

130 5. A claimant shall be ineligible for waiting week credit or benefits for any week for
131 which or a part of which he or she has received or is seeking unemployment benefits pursuant
132 to an unemployment insurance law of another state or the United States; provided, that if it be
133 finally determined that the claimant is not entitled to such unemployment benefits, such
134 ineligibility shall not apply.

135 6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for
136 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage
137 of work which exists because of a labor dispute in the factory, establishment or other premises
138 in which such claimant is or was last employed. In the event the claimant secures other
139 employment from which he or she is separated during the existence of the labor dispute, the
140 claimant must have obtained bona fide employment as a permanent employee for at least the
141 major part of each of two weeks in such subsequent employment to terminate his or her
142 ineligibility. If, in any case, separate branches of work which are commonly conducted as
143 separate businesses at separate premises are conducted in separate departments of the same
144 premises, each such department shall for the purposes of this subsection be deemed to be a
145 separate factory, establishment or other premises. This subsection shall not apply if it is shown
146 to the satisfaction of the deputy that:

147 (a) The claimant is not participating in or financing or directly interested in the labor
148 dispute which caused the stoppage of work; and

149 (b) The claimant does not belong to a grade or class of workers of which, immediately
150 preceding the commencement of the stoppage, there were members employed at the premises
151 at which the stoppage occurs, any of whom are participating in or financing or directly interested
152 in the dispute.

153 (2) "Stoppage of work" as used in this subsection means a substantial diminution of the
154 activities, production or services at the establishment, plant, factory or premises of the employing
155 unit. This definition shall not apply to a strike where the employees in the bargaining unit who
156 initiated the strike are participating in the strike. Such employees shall not be eligible for waiting
157 week credit or benefits during the period when the strike is in effect, regardless of diminution,

158 unless the employer has been found guilty of an unfair labor practice by the National Labor
159 Relations Board or a federal court of law for an act or actions preceding or during the strike.

160 7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis
161 of any services, substantially all of which consist of participating in sports or athletic events or
162 training or preparing to so participate, for any week which commences during the period between
163 two successive sport seasons (or similar periods) if such individual performed such services in
164 the first of such seasons (or similar periods) and there is a reasonable assurance that such
165 individual will perform such services in the later of such seasons (or similar periods).

166 8. Benefits shall not be payable on the basis of services performed by an alien, unless
167 such alien is an individual who was lawfully admitted for permanent residence at the time such
168 services were performed, was lawfully present for purposes of performing such services, or was
169 permanently residing in the United States under color of law at the time such services were
170 performed (including an alien who was lawfully present in the United States as a result of the
171 application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

172 (1) Any data or information required of individuals applying for benefits to determine
173 whether benefits are not payable to them because of their alien status shall be uniformly required
174 from all applicants for benefits.

175 (2) In the case of an individual whose application for benefits would otherwise be
176 approved, no determination that benefits to such individual are not payable because of such
177 individual's alien status shall be made except upon a preponderance of the evidence.

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] A test [is] conducted by a laboratory certified by the United States Department
10 of [Transportation, the test results] **Health and Human Services or another accrediting**
11 **organization, certifying organization or professional society approved by the department**
12 and the laboratory's trial packet shall be included in the administrative record and considered as
13 evidence.

14 [4. For this section to be applicable,] **3.** The claimant must have previously been notified
15 of the employer's alcohol and controlled substance workplace policy by conspicuously posting
16 the policy in the workplace, by including the policy in a written personnel policy or handbook,
17 or by statement of such policy in a collective bargaining agreement governing employment of

18 the employee. The policy, **public posting, handbook, collective bargaining agreement or**
19 **other written notice provided to the employee** must state that a positive test result [shall be
20 deemed misconduct and] may result in suspension or termination of employment.

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

27 6. Notwithstanding any provision of this chapter to the contrary, any claimant found to
28 be in violation of this section shall be subject to the cancellation of all or part of the claimants
29 wage credits as provided by subdivision (2) of subsection 2 of section 288.050.

30 7.]. **An employer may require a preemployment test for alcohol or controlled**
31 **substance use as a condition of employment, and test results shall be admissible so long as**
32 **the claimant was informed of the test requirement prior to taking the test. A random,**
33 **preemployment, reasonable suspicion or post-accident test result, conducted under this**
34 **section, which is positive for alcohol or controlled substance use shall be considered**
35 **misconduct.**

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

46 [8. All specimen collection and testing for drugs and alcohol under this chapter shall be
47 performed in accordance with the procedures provided for by the United States Department of
48 Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. Any
49 employer that performs drug testing or specimen collection shall use chain-of-custody procedures
50 established by regulations of the United States Department of Transportation. "Specimen" means
51 tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or
52 drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified
53 materials or substances for the purpose of maintaining control and accountability from initial

54 collection to final disposition for all such materials or substances, and providing for
55 accountability at each stage in handling, testing, and storing specimens and reporting test results.

56 9. For this section to be applicable,] **6. Test results from a certified laboratory create**
57 **a rebuttable presumption that all specimen collection, handling and testing for alcohol or**
58 **a controlled substance as defined in section 195.010, RSMo, were performed in accordance**
59 **with the procedures provided for by the accrediting entity's rules and regulations relating**
60 **to collection, chain of custody, handling and specimen testing.**

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

70 [10.] **8.** Use of a controlled substance as defined under section 195.010, RSMo, under
71 and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be
72 misconduct connected with work for the purposes of this section.

73 [11.] **9.** This section shall have no effect on employers who do not avail themselves of
74 the requirements and regulations for alcohol and controlled drug testing determinations that are
75 required to affirm misconduct connected with work findings.

76 [12.] **10.** Any employer that initiates an alcohol and drug testing policy after January 1,
77 2005, shall ensure that at least sixty days elapse between a general one-time notice to all
78 employees that an alcohol and drug testing workplace policy is being implemented and the
79 effective date of the program.

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

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

88 14.] **11. A discharge as a result of a claimant's refusal to take a test for alcohol or**
89 **a controlled substance, as defined by section 195.010, RSMo, or as a result of a clamant's**
90 **attempt to invalidate, adulterate or impede accurate results of a test for alcohol or**

91 **controlled substance, as defined by section 195.010, RSMo, administered by or at the**
92 **request of the employer shall be considered misconduct connected with the claimant's**
93 **work. If a deputy finds that a claimant has been discharged under this subsection, such**
94 **claimant shall be disqualified for waiting week credit and benefits under the provisions of**
95 **section 288.050.**

96 **12. A discharge as a result of a claimant's admission that the results would be**
97 **positive if given a test for alcohol or a controlled substance, as defined by section 195.010,**
98 **RSMo, administered by or at the request of the employer shall be considered misconduct**
99 **connected with the claimant's work. If a deputy finds that a claimant has been discharged**
100 **under this subsection, such claimant shall be disqualified for waiting week credit and**
101 **benefits under the provisions of section 288.050.**

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

288.046. 1. In applying provisions of this chapter, it is the intent of the general
2 **assembly to reject and abrogate previous case law interpretations of "misconduct**
3 **connected with work" requiring a finding of evidence of impairment of work performance,**
4 **including but not limited to, the holdings contained in Baldor Electric Company v. Raylene**
5 **Reasoner and Missouri Division of Employment Security, 66 S.W.3d 130 (Mo.App. E.D.**
6 **2001).**

7 **2. In determining whether misconduct connected with work has occurred, neither**
8 **the state, any agency of the state, nor any court of the state of Missouri shall require a**
9 **finding of evidence of impairment of work performance.**

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] **a deputy of the division or designated staff of an employment**
31 **office as defined in subsection 16 of section 288.030**, or to accept suitable work when offered
32 the claimant, either through the division or directly by an employer by whom the individual was
33 formerly employed, or to return to the individual's customary self-employment, if any, when so
34 directed by the deputy. An offer of work shall be rebuttably presumed if an employer notifies
35 the claimant in writing of such offer by sending an acknowledgment via any form of certified
36 mail issued by the United States Postal Service stating such offer to the claimant at the claimant's
37 last known address. Nothing in this subdivision shall be construed to limit the means by which
38 the deputy may establish that the claimant has or has not been sufficiently notified of available
39 work.

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

52 employment and at wages, hours, and working conditions which are substantially similar to those
53 prevailing for similar work in such community, or any work which the individual is capable of
54 performing at the wages prevailing for such work in the locality to which the individual has
55 moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable
56 for the individual;

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

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

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

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

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

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

88 4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be
89 determined to be disqualified for benefits because the claimant is in training approved pursuant
90 to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or
91 because the claimant left work which was not "suitable employment" to enter such training. For
92 the purposes of this subsection "suitable employment" means, with respect to a worker, work of
93 a substantially equal or higher skill level than the worker's past adversely affected employment,
94 and wages for such work at not less than eighty percent of the worker's average weekly wage as
95 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] **weekly**. The division of employment security shall cross-check at least monthly
63 unemployment compensation applicants and recipients with department of revenue drivers
64 license databases.

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

56			
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 is greater than or**
 121 **equal to four hundred fifty million dollars.** In the event that an employer remains at the
 122 maximum rate pursuant to this section for a third or subsequent year, an additional surcharge of
 123 one-quarter percent shall be annually assessed **if the balance in the trust fund remains less**
 124 **than four hundred fifty million dollars,** but in no case shall [this] the surcharge **authorized**
 125 **in this subsection** cumulatively exceed one **and one-half** percent. [Additionally, if an employer
 126 continues to remain at the maximum rate pursuant to this section an additional surcharge of
 127 one-half percent shall be assessed. In no case shall the total surcharge assessed to any employer
 128 exceed one and one-half percent in any given year.] **In no case shall the total of the**
 129 **contribution rate authorized under subsection 1 of this section plus the surcharge**
 130 **authorized under this subsection exceed seven and one-half percent. In no case shall the**
 131 **total of the contribution rate authorized under subsection 2 of this section plus the**
 132 **surcharge authorized under this subsection exceed ten and one-half percent.**

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:

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

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

17 [2. For calendar years 2005, 2006, and 2007, an employer's total contribution rate shall
 18 equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to

19 the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the
 20 contribution rate plus the increase authorized under subsection 1 of this section. Any moneys
 21 overcollected beyond the actual administrative, interest and principal repayment costs for the
 22 credit instruments used shall be deposited into the state unemployment insurance trust fund and
 23 credited to the employer's experience account. The temporary debt indebtedness assessment
 24 shall expire upon the last day of the fourth calendar quarter of 2007.]

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:

Balance in Trust Fund		Percentage of Decrease
More Than	[But] Equal to or Less Than	
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] **subsection**
33 **1 of this** section exceeds the amount of interest due on federal advancements by one hundred
34 thousand dollars or more, then each employer's experience rating account shall be credited with
35 an amount which bears the same ratio to the excess moneys collected under this section as that
36 employer's payment collected under this section bears to the total amount collected under this
37 section. Further, if on December thirty-first of any year the moneys collected under this section
38 exceed the amount of interest due on the federal advancements by less than one hundred
39 thousand dollars, the balance shall be transferred from the special employment security fund to
40 the Secretary of the Treasury of the United States to be credited to the account of this state in the
41 unemployment trust fund.

42 3. **This subsection shall only be effective in any year in which, on January first of**
43 **such year, the unemployment compensation trust fund does not have sufficient money to**
44 **meet the minimum level of debt service required for the following twelve months, and only**
45 **when the emergency fee authorized under this subsection is necessary to prevent default**
46 **on outstanding debt obligations incurred as a result of payment of benefits required under**
47 **this chapter.** In addition to all other contributions due under this chapter, if the fund is utilizing
48 moneys from the proceeds of credit instruments issued under section 288.330, or from the
49 moneys advanced under financial agreements under subdivision (17) of subsection 2 of section
50 288.330, or a combination of credit instrument proceeds and moneys advanced under financial
51 agreements each employer [shall] **may** be assessed a credit instrument and financing agreement

52 **emergency** repayment [surcharge. The total of such surcharge shall be calculated as an amount
53 up to one hundred fifty percent of the amount required in the twelve-month period following the
54 due date for the payment of such surcharge for the payment of the principal, interest, and
55 administrative expenses related to such credit instruments, or in the case of financial agreements
56 for the payment of principal, interest, and administrative expenses related to such financial
57 agreements, or in the case of a combination of credit instruments and financial agreements for
58 the payment of principal, interest, and administrative expenses for both. Each employer's
59 proportionate share shall be the product obtained by multiplying the total statewide credit
60 instrument and financing agreement repayment surcharge by a number obtained by dividing the
61 employer's total taxable wages for the prior year by the total taxable wages in the state for the
62 prior year.] **fee. The credit instrument and financing agreement emergency repayment fee**
63 **shall be calculated as a percentage of the contribution rate applied under this chapter. The**
64 **credit instrument and financing agreement emergency repayment fee shall be calculated**
65 **at a level sufficient to meet the minimum debt service obligations for the following twelve**
66 **months, when combined with the January first unemployment compensation trust fund**
67 **balance. The total credit instrument and financing agreement emergency repayment fee**
68 **shall not exceed ten percent of the employer's contribution rate.** Each employer shall be
69 notified of the amount due under this section by (January) thirtieth of each year and such amount
70 shall be considered delinquent thirty days thereafter.

288.175. 1. Notwithstanding any other provisions to the contrary, the division may
2 collect any debt by interception of the debtor's federal income tax refund, in the manner and to
3 the extent allowed by federal law.

4 2. "Debt" shall mean any established overpayment or sum past due that is legally owed
5 and enforceable under the Missouri employment security law, which has accrued through
6 contract or operation of law and which has become final under state law and remains uncollected.

7 3. "Debtor" shall mean any individual, sole proprietorship, partnership, corporation,
8 limited liability company, or other legal entity owing a debt.

9 **4. Notwithstanding any other provisions to the contrary, the division may utilize**
10 **collection agencies to collect any debt as defined in this section to the extent and manner**
11 **allowed by federal law.**

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, **or on motion of any party to the case**, may
32 reconsider any decision or order when it appears that such reconsideration is essential to the
33 accomplishment of the object and purpose of this law. **The authority of the appeals tribunal**
34 **to reconsider any decision or order under this section shall continue throughout the thirty-**
35 **day time limit, regardless of whether any party has initiated further appeal under section**
36 **288.200 during the thirty-day period.**

37 4. Unless a petition for reassessment is withdrawn or is allowed without a hearing, the
38 petitioners shall be given a reasonable opportunity for a fair hearing before an appeals tribunal
39 upon each such petition. The appeals tribunal shall promptly notify the interested parties of its
40 decision upon such petition together with its reason therefor. In addition, in any case wherein
41 the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail
42 to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. In the
43 absence of the filing of an application for review of such decision, the decision, whether it results
44 in a reassessment or otherwise, shall become final thirty days after the date of notification or

45 mailing thereof; except that, within thirty days of either notification or mailing of the appeals
46 tribunal's decision or order, the appeals tribunal, on its own motion, **or on motion of any party**
47 **to the case**, may reconsider any decision or order when it appears that such reconsideration is
48 essential to the accomplishment of the object and purposes of this law. **The authority of the**
49 **appeals tribunal to reconsider any decision under this section shall continue throughout**
50 **the thirty-day time limit, regardless of whether any party has initiated further appeal**
51 **under section 288.200 during that thirty-day period.**

52 5. Any party subject to any decision of an appeals tribunal pursuant to this chapter has
53 a right to counsel and shall be notified prior to a hearing conducted pursuant to this chapter that
54 a decision of the appeals tribunal is presumptively conclusive for the purposes of this chapter as
55 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
7 pursuant to] **fee under** section 288.128 related to the payment of principal, interest, and
8 administrative expenses related to credit instruments issued under section 288.330, or the
9 payment of the principal, interest, and administrative expenses related to financial agreements
10 under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal,
11 interest, and administrative expenses related to a combination of credit instruments and financial
12 agreements shall be paid into this fund. The moneys collected pursuant to section 288.128 shall
13 be used for the payment of interest due on federal advances received pursuant to section 288.330.
14 Amounts received pursuant to the credit instrument and financing agreement **emergency**
15 repayment [surcharge pursuant to] **fee under** subsection 3 of section 288.128 shall be used,
16 following appropriation by the general assembly and exclusively for payment of principal,
17 interest, and administrative expenses related to credit instruments issued under that section, or
18 the payment of principal, interest, and administrative expenses related to financial agreements
19 under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal,
20 interest, and administrative expenses related to a combination of credit instruments and financial
21 agreements. Such moneys, except for moneys collected pursuant to section 288.128, shall not
22 be expended or available for expenditure in any manner which would permit their substitution
23 for, or a corresponding reduction in, federal funds which would in the absence of such money
24 be available to finance expenditures for the administration of the employment security law, but
25 nothing in this section shall prevent such moneys, except for moneys collected pursuant to
26 section 288.128, from being used as a revolving fund, to cover expenditures, necessary and

27 proper under the law, for which federal funds have been duly requested but not yet received,
28 subject to the charging of such expenditures against such funds when received. Subject to the
29 approval of the director of the department of labor and industrial relations, the moneys in this
30 fund, except for moneys collected pursuant to section 288.128, shall be used by the department
31 of labor and industrial relations for the payment of costs of administration which are found not
32 to have been properly and validly chargeable against federal grants or other funds received for
33 or in the unemployment compensation administration fund. Such moneys, except for moneys
34 collected pursuant to section 288.128, shall be available either to satisfy the obligations incurred
35 by the department of labor and industrial relations for the division directly or by requesting the
36 board of fund commissioners to transfer the required amount from the special employment
37 security fund to the unemployment compensation administration fund. The board of fund
38 commissioners shall upon receipt of a written request of the department of labor and industrial
39 relations make any such transfer. No expenditures of this fund or transfer herein provided,
40 except for moneys collected pursuant to section 288.128, shall be made unless and until the
41 director of the department of labor and industrial relations finds that no other funds are available
42 or can properly be used to finance such expenditures, except that as hereinafter authorized
43 expenditures from such fund may be made for the purpose of acquiring lands and buildings, or
44 for the erection of buildings on lands so acquired, which are deemed necessary by the director
45 of the department of labor and industrial relations for the proper administration of this law. The
46 director of the department of labor and industrial relations shall order the transfer of such funds
47 or the payment of any such obligation and such funds shall be paid by the state treasurer on
48 requisitions drawn by the director of the department of labor and industrial relations directing
49 the state auditor to issue his or her warrant therefor. Any such warrant shall be drawn by the
50 state auditor based upon bills of particulars and vouchers certified by an officer or employee
51 designated by the director of the department of labor and industrial relations. Such certification
52 shall among other things include a duly certified copy of the director of the department of labor
53 and industrial relations' findings hereinbefore referred to. The moneys in this fund, except for
54 moneys collected pursuant to section 288.128, are hereby specifically made available to replace,
55 within a reasonable time, any moneys received by this state pursuant to section 302 of the
56 Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended, which, because of any action
57 or contingency, have been lost or have been expended for purposes other than, or in amounts in
58 excess of, those necessary for the proper administration of the employment security law. The
59 moneys in this fund shall be continuously available to the director of the department of labor and
60 industrial relations for expenditure in accordance with the provisions of this section and shall not
61 lapse at any time or 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] ~~ten~~ 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 **ten** 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 principal incurred due to the payment of unemployment benefits may be repaid**
152 **from the unemployment compensation fund**, subject to appropriation by the general assembly.

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

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

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

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

169 (e) The board may prescribe the form, details and incidents of the financing agreements
170 and make such covenants that in its judgment are advisable or necessary to properly secure the
171 payment thereof provided that any terms, provisions or covenants provided in any such financing
172 agreement shall not be inconsistent with the provisions of this section. If such financing
173 agreements shall be authenticated by the bank or trust company acting as registrar for such by
174 the manual signature of a duly authorized officer or employee thereof, the duly authorized
175 officers of the board executing and attesting such financing agreements may all do so by
176 facsimile signature provided such signatures have been duly filed as provided in the uniform
177 facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly
178 authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not
179 apply to such financing agreements.

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

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

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

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

288.380. 1. Any agreement by a worker to waive, release, or commute such worker's rights to benefits or any other rights pursuant to this chapter or pursuant to an employment security law of any other state or of the federal government shall be void. Any agreement by a worker to pay all or any portion of any contributions required shall be void. No employer shall directly or indirectly make any deduction from wages to finance the employer's contributions required from him or her, or accept any waiver of any right pursuant to this chapter by any individual in his or her employ.

2. No employing unit or any agent of an employing unit or any other person shall make a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a material fact to prevent or reduce the payment of benefits to any individual, nor to avoid becoming or remaining an employer, nor to avoid or reduce any contribution or other payment required from any employing unit, nor shall willfully fail or refuse to make any contributions or payments nor to furnish any required reports nor to produce or permit the inspection or copying of required records. Each such requirement shall apply regardless of whether it is a requirement of this chapter, of an employment security law of any other state or of the federal government.

3. No person shall make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact, to obtain or increase any benefit or other payment pursuant to this chapter, or under an employment security law of any other state or of the federal government either for himself or herself or for any other person.

4. No person shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in such person's power so to do in obedience to a subpoena of the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them.

5. No individual claiming benefits shall be charged fees of any kind in any proceeding pursuant to this chapter by the division, or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division.

6. No employee of the division or any person who has obtained any list of applicants for work or of claimants for or recipients of benefits pursuant to this chapter shall use or permit the use of such lists for any political purpose.

7. Any person who shall willfully violate any provision of this chapter, or of an employment security law of any other state or of the federal government or any rule or regulation, the observance of which is required under the terms of any one of such laws, shall upon conviction be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for

37 not more than six months, or by both such fine and imprisonment, and each such violation or
38 each day such violation continues shall be deemed to be a separate offense.

39 8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court
40 of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction
41 of which the person guilty of contumacy or refusal to obey is found or resides or transacts
42 business, upon application by the director, the commission, an appeals tribunal, or any duly
43 authorized representative of any one of them shall have jurisdiction to issue to such person an
44 order requiring such person to appear before the director, the commission, an appeals tribunal
45 or any duly authorized representative of any one of them, there to produce evidence if so ordered
46 or there to give testimony touching the matter under investigation or in question; and any failure
47 to obey such order of the court may be punished by the court as a contempt thereof.

48 9. (1) Any individual or employer who receives or denies unemployment benefits by
49 intentionally misrepresenting, misstating, or failing to disclose any material fact has committed
50 fraud. After the discovery of facts indicating fraud, a deputy shall make a written determination
51 that the individual obtained or denied unemployment benefits by fraud and that the individual
52 must promptly repay the unemployment benefits to the fund. In addition, the deputy shall assess
53 a penalty equal to twenty-five percent of the amount fraudulently obtained or denied. If division
54 records indicate that the individual or employer had a prior established overpayment or record
55 of denial due to fraud, the deputy shall, on the present overpayment or determination, assess a
56 penalty equal to one hundred percent of the amount fraudulently obtained.

57 (2) Unless the individual or employer within thirty calendar days after notice of such
58 determination of overpayment by fraud is either delivered in person or mailed to the last known
59 address of such individual or employer files an appeal from such determination, it shall be final.
60 Proceedings on the appeal shall be conducted in accordance with section 288.190.

61 (3) If the individual or employer fails to repay the unemployment benefits and penalty,
62 assessed as a result of the deputy's determination that the individual or employer obtained or
63 denied unemployment benefits by fraud, such sum shall be collectible in the manner provided
64 in sections 288.160 and 288.170 for the collection of past due contributions. If the individual
65 or employer fails to repay the unemployment benefits that the individual or employer denied or
66 obtained by fraud, the division may offset from any future unemployment benefits otherwise
67 payable the amount of the overpayment, or may take such steps as are necessary to effect
68 payment from the individual or employer. Future benefits may not be used to offset the penalty
69 due. Money received in repayment of fraudulently obtained or denied unemployment benefits
70 and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty
71 amount due. Payments made toward the penalty amount due shall be credited to the special
72 employment security fund.

73 (4) If fraud or evasion on the part of any employer is discovered by the division, the
74 employer will be subject to the fraud provisions of subsection 4 of section 288.160.

75 (5) The provisions of this subsection shall become effective July 1, 2005.

76 10. An individual who willfully fails to disclose amounts earned during any week with
77 respect to which benefits are claimed by him or her, willfully fails to disclose or has falsified as
78 to any fact which would have disqualified him or her or rendered him or her ineligible for
79 benefits during such week, or willfully fails to disclose a material fact or makes a false statement
80 or representation in order to obtain or increase any benefit pursuant to this chapter shall forfeit
81 all of his or her benefit rights, and all of his or her wage credits accrued prior to the date of such
82 failure to disclose or falsification shall be canceled, and any benefits which might otherwise have
83 become payable to him or her subsequent to such date based upon such wage credits shall be
84 forfeited; except that, the division may, upon good cause shown, modify such reduction of
85 benefits and cancellation of wage credits. It shall be presumed that such failure or falsification
86 was willful in any case in which an individual signs and certifies a claim for benefits and fails
87 to disclose or falsifies as to any fact relative to such claim.

88 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or
89 may become due or payable pursuant to this chapter shall be void; and such rights to benefits
90 shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for
91 the collection of debt; and benefits received by any individual, so long as they are not mingled
92 with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection
93 of all debts except debts incurred for necessities furnished to such individual or the individual's
94 spouse or dependents during the time such individual was unemployed. Any waiver of any
95 exemption provided for in this subsection shall be void; except that this section shall not apply
96 to:

97 (a) Support obligations, as defined pursuant to paragraph (g) of subdivision (2) of this
98 subsection, which are being enforced by a state or local support enforcement agency against any
99 individual claiming unemployment compensation pursuant to this chapter; or

100 (b) Uncollected overissuances (as defined in Section 13(c)(1) of the Food Stamp Act of
101 1977) of food stamp coupons;

102 (2) (a) An individual filing a new claim for unemployment compensation shall, at the
103 time of filing such claim, disclose whether or not the individual owes support obligations, as
104 defined pursuant to paragraph (g) of this subdivision or owes uncollected overissuances of food
105 stamp coupons (as defined in Section 13(c)(1) of the Food Stamp Act of 1977). If any such
106 individual discloses that he or she owes support obligations or uncollected overissuances of food
107 stamp coupons, and is determined to be eligible for unemployment compensation, the division
108 shall notify the state or local support enforcement agency enforcing the support obligation or the

109 state food stamp agency to which the uncollected food stamp overissuance is owed that such
110 individual has been determined to be eligible for unemployment compensation;

111 (b) The division shall deduct and withhold from any unemployment compensation
112 payable to an individual who owes support obligations as defined pursuant to paragraph (g) of
113 this subdivision or who owes uncollected food stamp overissuances:

114 a. The amount specified by the individual to the division to be deducted and withheld
115 pursuant to this paragraph if neither subparagraph b. nor subparagraph c. of this paragraph is
116 applicable; or

117 b. The amount, if any, determined pursuant to an agreement submitted to the division
118 pursuant to Section 454(20)(B)(i) of the Social Security Act by the state or local support
119 enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if
120 any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to
121 Section 13(c)(3)(a) of the Food Stamp Act of 1977; or

122 c. Any amount otherwise required to be so deducted and withheld from such
123 unemployment compensation pursuant to properly served legal process, as that term is defined
124 in Section 459(i) of the Social Security Act; or any amount otherwise required to be deducted
125 and withheld from the unemployment compensation pursuant to Section 13(c)(3)(b) of the Food
126 Stamp Act of 1977;

127 (c) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision
128 shall be paid by the division to the appropriate state or local support enforcement agency or state
129 food stamp agency;

130 (d) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision
131 shall, for all purposes, be treated as if it were paid to the individual as unemployment
132 compensation and paid by such individual to the state or local support enforcement agency in
133 satisfaction of the individual's support obligations or to the state food stamp agency to which the
134 uncollected overissuance is owed as repayment of the individual's uncollected overissuance;

135 (e) For purposes of paragraphs (a), (b), (c), and (d) of this subdivision, the term
136 "unemployment compensation" means any compensation payable pursuant to this chapter,
137 including amounts payable by the division pursuant to an agreement pursuant to any federal law
138 providing for compensation, assistance, or allowances with respect to unemployment;

139 (f) Deductions will be made pursuant to this section only if appropriate arrangements
140 have been made for reimbursement by the state or local support enforcement agency, or the state
141 food stamp agency, for the administrative costs incurred by the division pursuant to this section
142 which are attributable to support obligations being enforced by the state or local support
143 enforcement agency or which are attributable to uncollected overissuances of food stamp
144 coupons;

(g) The term "support obligations" is defined for purposes of this subsection as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services pursuant to Part D of Title IV of the Social Security Act;

(h) The term "state or local support enforcement agency", as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in paragraph (g) of this subdivision;

(i) The term "state food stamp agency" as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in the Food Stamp Act of 1977;

(j) The director may prescribe the procedures to be followed and the form and contents of any documents required in carrying out the provisions of this subsection;

(k) The division shall comply with the following priority when deducting and withholding amounts from any unemployment compensation payable to an individual:

a. Before withholding any amount for child support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold from any unemployment compensation payable to an individual the amount, as determined by the division, owed pursuant to subsection 12 or 13 of this section;

b. If, after deductions are made pursuant to subparagraph a. of this paragraph, an individual has remaining unemployment compensation amounts due and owing, and the individual owes support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold any remaining unemployment compensation amounts for application to child support obligations owed by the individual;

c. If, after deductions are made pursuant to subparagraphs a. and b. of this paragraph, an individual has remaining unemployment compensation amounts due and owing, and the individual owes uncollected overissuances of food stamp coupons, the division shall deduct and withhold any remaining unemployment compensation amounts for application to uncollected overissuances of food stamp coupons owed by the individual.

12. Any person who, by reason of the nondisclosure or misrepresentation by such person or by another of a material fact, has received any sum as benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sums deducted from any future benefits payable to such person pursuant to this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amounts so received by him or her[, and such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions].

182 13. Any person who, by reason of any error or omission or because of a lack of
183 knowledge of material fact on the part of the division, has received any sum of benefits pursuant
184 to this chapter while any conditions for the receipt of benefits imposed by this chapter were not
185 fulfilled in such person's case, or while such person was disqualified from receiving benefits,
186 shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such
187 sums deducted from any further benefits payable to such person pursuant to this chapter,
188 provided that the division may elect not to process such possible overpayments where the amount
189 of same is not over twenty percent of the maximum state weekly benefit amount in effect at the
190 time the error or omission was discovered. [Recovering overpaid unemployment compensation
191 benefits which are a result of error or omission on the part of the claimant shall be pursued by
192 the division through billing and setoffs against state income tax refunds.]

193 14. **Recovering overpaid unemployment compensation benefits shall be pursued by**
194 **the division against any person receiving such overpaid unemployment compensation**
195 **benefits through billing, setoffs against state and federal tax refunds to the extent**
196 **permitted by federal law, intercepts of lottery winnings under section 313.321, RSMo, and**
197 **collection efforts as provided for in sections 288.160, 288.170, and 288.175.**

198 15. Any person who has received any sum as benefits under the laws of another state,
199 or under any unemployment benefit program of the United States administered by another state
200 while any conditions for the receipt of benefits imposed by the law of such other state were not
201 fulfilled in his or her case, shall after an opportunity for a fair hearing pursuant to subsection 2
202 of section 288.190 have such sums deducted from any further benefits payable to such person
203 pursuant to this chapter, but only if there exists between this state and such other state a
204 reciprocal agreement under which such entity agrees to recover benefit overpayments, in like
205 fashion, on behalf of this state.

288.381. 1. The provisions of subsection 6 of section 288.070 notwithstanding, benefits
2 paid to a claimant pursuant to subsection 5 of section 288.070 to which the claimant was not
3 entitled based on a subsequent determination, redetermination or decision which has become
4 final, shall be collectible by the division as provided in subsections [11 and] 12 **and 13** of section
5 288.380.

6 2. Notwithstanding any other provision of law to the contrary, when a claimant who has
7 been separated from his employment receives benefits under this chapter and subsequently
8 receives a back pay award pursuant to action by a governmental agency, court of competent
9 jurisdiction or as a result of arbitration proceedings, for a period of time during which no services
10 were performed, the division shall establish an overpayment equal to the lesser of the amount
11 of the back pay award or the benefits paid to the claimant which were attributable to the period
12 covered by the back pay award. After the claimant has been provided an opportunity for a fair
13 hearing under the provision of section 288.190, the employer shall withhold from the employee's

14 backpay award the amount of benefits so received and shall pay such amount to the division and
15 separately designate such amount.

16 3. For the purposes of subsection 2 of this section, the division shall provide the
17 employer with the amount of benefits paid to the claimant.

18 4. Any individual, company, association, corporation, partnership, bureau, agency or the
19 agent or employee of the foregoing who interferes with, obstructs, or otherwise causes an
20 employer to fail to comply with the provisions of subsection 2 of this section shall be liable for
21 damages in the amount of three times the amount owed by the employer to the division. The
22 division shall proceed to collect such damages under the provisions of sections 288.160 and
23 288.170.

288.500. 1. There is created under this section a voluntary "Shared Work
2 Unemployment Compensation Program". In connection therewith, the division may adopt rules
3 and establish procedures, not inconsistent with this section, which are necessary to administer
4 this program.

5 2. As used in this section, the following terms mean:

6 (1) "Affected unit", a specified department, shift, or other unit of three or more
7 employees which is designated by an employer to participate in a shared work plan;

8 (2) "Division", the division of employment security;

9 (3) "Fringe benefit", health insurance, a retirement benefit received under a pension plan,
10 a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that
11 is provided by an employer;

12 (4) "Normal weekly hours of work", as to any individual, the lesser of forty hours or the
13 average obtained by dividing the total number of hours worked per week in the preceding
14 twelve-week period by the number twelve;

15 (5) "Participating employee", an employee who works a reduced number of hours under
16 a shared work plan;

17 (6) "Participating employer", an employer who has a shared work plan in effect;

18 (7) "Shared work benefit", an unemployment compensation benefit that is payable to an
19 individual in an affected unit because the individual works reduced hours under an approved
20 shared work plan;

21 (8) "Shared work plan", a program for reducing unemployment under which employees
22 who are members of an affected unit share the work remaining after a reduction in their normal
23 weekly hours of work;

24 (9) "Shared work unemployment compensation program", a program designed to reduce
25 unemployment and stabilize the work force by allowing certain employees to collect
26 unemployment compensation benefits if the employees share the work remaining after a
27 reduction in the total number of hours of work and a corresponding reduction in wages.

28 3. An employer who wishes to participate in the shared work unemployment
29 compensation program established under this section shall submit a written shared work plan in
30 a form acceptable to the division for approval. As a condition for approval by the division, a
31 participating employer shall agree to furnish the division with reports relating to the operation
32 of the shared work plan as requested by the division. The employer shall monitor and evaluate
33 the operation of the established shared work plan as requested by the division and shall report
34 the findings to the division.

35 4. The division may approve a shared work plan if:

36 (1) The employer has filed all reports required to be filed under this chapter for all past
37 and current periods and has paid all contributions due for all past and current periods;

38 (2) The shared work plan applies to and identifies a specified affected unit;

39 (3) The employees in the affected unit are identified by name and Social Security
40 number;

41 (4) The shared work plan reduces the normal weekly hours of work for an employee in
42 the affected unit by not less than twenty percent and not more than forty percent;

43 (5) The shared work plan applies to at least ten percent of the employees in the affected
44 unit;

45 (6) The shared work plan describes the manner in which the participating employer treats
46 the fringe benefits of each employee in the affected unit; and

47 (7) The employer certifies that the implementation of a shared work plan and the
48 resulting reduction in work hours is in lieu of temporary layoffs that would affect at least ten
49 percent of the employees in the affected unit and that would result in an equivalent reduction in
50 work hours.

51 5. If any of the employees who participate in a shared work plan under this section are
52 covered by a collective bargaining agreement, the shared work plan shall be approved in writing
53 by the collective bargaining agent.

54 6. No shared work plan which will subsidize seasonal employers during the off-season
55 or subsidize employers, at least fifty percent of the employees of which have normal weekly
56 hours of work equaling thirty-two hours or less, shall be approved by the division. No shared
57 work plan benefits will be initiated [for pay periods] when the reduced hours [reflect] **coincide**
58 **with** holiday earnings already committed to be paid by the employer. **Shared work-plan**
59 **benefits may not be denied in any week containing a holiday for which holiday earnings**
60 **are committed to be paid by the employer unless the shared work benefits to be paid are**
61 **for the same hours in the same day as the holiday earnings.**

62 7. The division shall approve or deny a shared work plan not later than the thirtieth day
63 after the day on which the shared work plan is received by the division. The division shall
64 approve or deny a plan in writing. If the division denies a plan, the division shall notify the

65 employer of the reasons for the denial. Approval or denial of a plan by the division shall be final
66 and such determination shall be subject to review in the manner otherwise provided by law. If
67 approval of a plan is denied by the division, the employer may submit a new plan to the division
68 for consideration no sooner than forty-five calendar days following the date on which the
69 division disapproved the employer's previously submitted plan.

70 8. The division may revoke approval of a shared work plan and terminate the plan if it
71 determines that the shared work plan is not being executed according to the terms and intent of
72 the shared work unemployment compensation program, or if it is determined by the division that
73 the approval of the shared work plan was based, in whole or in part, upon information contained
74 in the plan which was either false or substantially misleading.

75 9. Each shared work plan approved by the division shall become effective on the first
76 day of the week in which it is approved by the division or on a later date as specified in the
77 shared work plan. Each shared work plan approved by the division shall expire on the last day
78 of the twelfth full calendar month after the effective date of such shared work plan.

79 10. An employer may modify a shared work plan created under this section to meet
80 changed conditions if the modification conforms to the basic provisions of the shared work plan
81 as originally approved by the division. The employer shall report the changes made to the plan
82 in writing to the division at least seven days before implementing such changes. The division
83 shall reevaluate the shared work plan and may approve the modified shared work plan if it meets
84 the requirements for approval under subsection 4 of this section. The approval of a modified
85 shared work plan shall not, under any circumstances, affect the expiration date originally set for
86 the shared work plan. If modifications cause the shared work plan to fail to meet the
87 requirements for approval, the division shall deny approval of the modifications as provided in
88 subsection 7 of this section.

89 11. Notwithstanding any other provisions of this chapter, an individual is unemployed
90 for the purposes of this section in any week in which the individual, as an employee in an
91 affected unit, works less than his normal weekly hours of work in accordance with an approved
92 shared work plan in effect for that week.

93 12. An individual who is otherwise entitled to receive regular unemployment insurance
94 benefits under this chapter shall be eligible to receive shared work benefits with respect to any
95 week in which the division finds that:

96 (1) The individual is employed as a member of an affected unit subject to a shared work
97 plan that was approved before the week in question and is in effect for that week;

98 (2) Notwithstanding the provisions of subdivision (2) of subsection 1 of section 288.040,
99 the individual is able to work, available for work and works all available hours with the
100 participating employer;

101 (3) The individual's normal weekly hours of work have been reduced by at least twenty
102 percent but not more than forty percent, with a corresponding reduction in wages; and

103 (4) The individual has served a "waiting week" as defined in section 288.030.

104 13. A waiting week served under the provisions of subdivision (3) of subsection 1 of
105 section 288.040 shall serve to meet the requirements of subdivision (4) of subsection 12 of this
106 section and a waiting week served under the provisions of subdivision (4) of subsection 12 of
107 this section shall serve to meet the requirements of section 288.040. Notwithstanding any other
108 provisions of this chapter, an individual who files a new initial claim during the pendency of the
109 twelve-month period in which a shared work plan is in effect shall serve a waiting week whether
110 or not the individual has served a waiting week under this subsection.

111 14. The division shall not deny shared work benefits for any week to an otherwise
112 eligible individual by reason of the application of any provision of this chapter that relates to
113 availability for work, active search for work, or refusal to apply for or accept work with an
114 employer other than the participating employer under the plan.

115 15. The division shall pay an individual who is eligible for shared work benefits under
116 this section a weekly shared work benefit amount equal to the individual's regular weekly benefit
117 amount for a period of total unemployment less any deductible amounts under this chapter except
118 wages received from any employer, multiplied by the full percentage of reduction in the
119 individual's hours as set forth in the employer's shared work plan. If the shared work benefit
120 amount calculated under this subsection is not a multiple of one dollar, the division shall round
121 the amount so calculated to the next lowest multiple of one dollar. An individual shall be
122 ineligible for shared work benefits for any week in which the individual performs paid work for
123 the participating employer in excess of the reduced hours established under the shared work plan.

124 16. An individual shall not be entitled to receive shared work benefits and regular
125 unemployment compensation benefits in an aggregate amount which exceeds the maximum total
126 amount of benefits payable to that individual in a benefit year as provided under section 288.038.
127 Notwithstanding any other provisions of this chapter, an individual shall not be eligible to
128 receive shared work benefits for more than twenty-six calendar weeks during the twelve-month
129 period of the shared work plan. No week shall be counted as a week of unemployment for the
130 purposes of this subsection unless it occurs within the twelve-month period of the shared work
131 plan.

132 17. Notwithstanding any other provision of this chapter, all benefits paid under a shared
133 work plan which are chargeable to the participating employer or any other base period employer
134 of a participating employee shall be charged to the account of the participating employer under
135 the plan.

136 18. An individual who has received all of the shared work benefits and regular
137 unemployment compensation benefits available in a benefit year is an exhaustee under section

138 288.062 and is entitled to receive extended benefits under section 288.062 if the individual is
139 otherwise eligible under that section.

290.595. 1. As used in this section the following terms shall mean:

2 (1) "Employer", includes the state, or any political or civil subdivision thereof, or
3 any person employing six or more persons within the state, and any person directly acting
4 in the interest of an employer, but does not include corporations and associations owned
5 and operated by religious or sectarian groups;

6 (2) "Proper authorities", public authorities or authorities of the employer, but shall
7 not include any individual who engaged in the reported illegal conduct.

8 2. Existing common law is hereby codified regarding the public policy exceptions
9 to the at-will employment doctrine based on an employee's whistle-blowing or refusal to
10 commit an illegal act. This act does not take away or impair vested rights acquired under
11 existing common law, nor does it create a new obligation or impose a new duty.

12 3. The at-will employment doctrine shall not apply when the elements of a whistle-
13 blower cause of action are established. A whistle-blower cause of action for wrongful
14 discharge in violation of public policy is established if an employee proves by a
15 preponderance of the evidence that:

16 (1) The employee reported to proper authorities serious misconduct that
17 constituted an actual violation of a statute, constitutional provision, or regulation and of
18 well-established and clearly mandated public policy;

19 (2) The employee was discharged; and

20 (3) The discharge was caused by the employee's report to proper authorities.

21 4. The at-will employment doctrine shall not apply when the elements of a refusal
22 to commit an illegal act cause of action are established. A refusal to commit an illegal act
23 cause of action for wrongful discharge in violation of public policy is established if an
24 employee proves by a preponderance of the evidence that:

25 (1) The employer directed the employee to perform conduct that actually violated
26 a statute, constitutional provision, or regulation;

27 (2) The employee specifically refused the directive to perform the unlawful act;

28 (3) The employee was discharged; and

29 (4) The discharge was caused by the employee's refusal to perform the unlawful
30 act.

[288.475. 1. There is hereby created a "Missouri State Unemployment
2 Council". The council shall consist of nine appointed voting members and two
3 appointed nonvoting members. All appointees shall be persons whose training
4 and experience qualify them to deal with the difficult problems of unemployment
5 compensation, particularly legal, accounting, actuarial, economic, and social
6 aspects of unemployment compensation.

7 (1) Three voting members shall be appointed to the council by the
8 governor. One voting member shall be appointed on account of his or her
9 vocation, employment, or affiliations being classed as representative of
10 employers. One voting member shall be appointed on account of his or her
11 vocation, employment, or affiliations being classed as representative of
12 employees. One voting member shall be appointed to represent the public
13 interest separate from employee or employer representation.

14 (2) Three voting members and one nonvoting member shall be appointed
15 to the council by the speaker of the house of representatives. One voting member
16 shall be appointed on account of his or her vocation, employment, or affiliations
17 being classed as representative of employers that employ twenty or less
18 employees. One voting member shall be appointed on account of his or her
19 vocation, employment, or affiliations being classed as representative of
20 employees. One voting member shall be appointed to represent the public
21 interest separate from employee or employer representation. One nonvoting
22 member shall be appointed from the house of representatives.

23 (3) Three voting members and one nonvoting member shall be appointed
24 to the council by the president pro tem of the senate. One voting member shall
25 be appointed on account of his or her vocation, employment, or affiliations being
26 classed as representative of employers. One voting member shall be appointed
27 on account of his or her vocation, employment, or affiliations being classed as
28 representative of employees. One voting member shall be appointed to represent
29 the public interest separate from employee or employer representation. One
30 nonvoting member shall be appointed from the senate.

31 2. The council shall organize itself and select a chairperson or
32 cochairpersons and other officers from the nine voting members. Six voting
33 members shall constitute a quorum and the council shall act only upon the
34 affirmative vote of at least five of the voting members. The council shall meet
35 no less than four times yearly. Members of the council shall serve without
36 compensation, but are to be reimbursed the amount of actual expenses. Actual
37 expenses shall be paid from the special employment security fund under section
38 288.310.

39 3. The division shall provide professional and clerical assistance as
40 needed for regularly scheduled meetings.

41 4. Each nonvoting member shall serve for a term of four years or until he
42 or she is no longer a member of the general assembly whichever occurs first. A
43 nonvoting member's term shall be a maximum of four years. Each voting
44 member shall serve for a term of three years. For the initial appointment, the
45 governor-appointed employer representative, the speaker of the house-appointed
46 employee representative, and the president pro tem of the senate-appointed public
47 interest representative shall serve an initial term of one year. For the initial
48 appointment, the governor-appointed employee representative, the speaker of the
49 house-appointed public interest representative, and the president pro tem of the
50 senate-appointed employer representative shall serve an initial term of two years.

51 At the end of a voting member's term he or she may be reappointed; however, he
52 or she shall serve no more than two terms excluding the initial term for a
53 maximum of eight years.

54 5. The council shall advise the division in carrying out the purposes of
55 this chapter. The council shall submit annually by January fifteenth to the
56 governor and the general assembly its recommendations regarding amendments
57 to this chapter, the status of unemployment insurance, the projected maintenance
58 of the solvency of unemployment insurance, and the adequacy of unemployment
59 compensation.

60 6. The council shall present to the division every proposal of the council
61 for changes in this chapter and shall seek the division's concurrence with the
62 proposal. The division shall give careful consideration to every proposal
63 submitted by the council for legislative or administrative action and shall review
64 each legislative proposal for possible incorporation into department of labor and
65 industrial relations' recommendations.

66 7. The council shall have access to only the records of the division that
67 are necessary for the administration of this chapter and to the reasonable services
68 of the employees of the division. It may request the director or any of the
69 employees appointed by the director or any employee subject to this chapter to
70 appear before it and to testify relative to the functioning of this chapter and to
71 other relevant matters. The council may conduct research of its own, make and
72 publish reports, and recommend to the division needed changes in this chapter
73 or in the rules of the division as it considers necessary.

74 8. The council, unless prohibited by a concurrent resolution of the
75 general assembly, shall be authorized to commission an outside study of the
76 solvency, adequacy, and staffing and operational efficiency of the Missouri
77 unemployment system. The study shall be conducted every five years, the first
78 being conducted in fiscal year 2005. The study shall be funded subject to
79 appropriation from the special employment security fund under section 288.310.]

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