

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

Reported from the Committee on Small Business, Insurance and Industrial Relations, April 20, 2006, with recommendation that the Senate Committee Substitute do pass.

4598S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 288.030, 288.032, 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, 288.330, 288.380, 288.381, and 288.500, RSMo, and to enact in lieu thereof twenty-one new sections relating to employment, with penalty provisions and an effective date.

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

Section A. Sections 288.030, 288.032, 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288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.046, 288.050,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, 288.330, 288.380, 288.381, 288.500, and 290.595, to read as follows:

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

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

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

(3) "Benefit year", the one-year period beginning with the first day of the

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

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

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

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

20 (6) "Claimant", an individual who has filed an initial claim for
21 determination of such individual's status as an insured worker, a notice of
22 unemployment, a certification for waiting week credit, or a claim for benefits;

23 (7) "Commission", the labor and industrial relations commission of
24 Missouri;

25 (8) "Common paymaster", two or more related corporations in which one
26 of the corporations has been designated to disburse remuneration to concurrently
27 employed individuals of any of the related corporations;

28 (9) "Contributions", the money payments to the unemployment
29 compensation fund required by this chapter, exclusive of interest and penalties;

30 (10) "Decision", a ruling made by an appeals tribunal or the commission
31 after a hearing;

32 (11) "Deputy", a representative of the division designated to make
33 investigations and administrative determinations on claims or matters of
34 employer liability or to perform related work;

35 (12) "Determination", any administrative ruling made by the division
36 without a hearing;

37 (13) "Director", the administrative head of the division of employment
38 security;

39 (14) "Division", the division of employment security which administers
40 this chapter;

41 (15) "Employing unit", any individual, organization, partnership,
42 corporation, common paymaster, or other legal entity, including the legal
43 representatives thereof, which has or, subsequent to June 17, 1937, had in its
44 employ one or more individuals performing services for it within this state. All
45 individuals performing services within this state for any employing unit which

46 maintains two or more separate establishments within this state shall be deemed
47 to be employed by a single employing unit for all the purposes of this
48 chapter. Each individual engaged to perform or to assist in performing the work
49 of any person in the service of an employing unit shall be deemed to be engaged
50 by such employing unit for all the purposes of this chapter, whether such
51 individual was engaged or paid directly by such employing unit or by such person,
52 provided the employing unit had actual or constructive knowledge of the work;

53 (16) "Employment office", a free public employment office operated by this
54 or any other state as a part of a state controlled system of public employment
55 offices including any location designated by the state as being a part of the
56 one-stop career system;

57 (17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full
58 trailer, any combination of these and any other type of equipment used by
59 authorized carriers in the transportation of property for hire;

60 (18) "Fund", the unemployment compensation fund established by this
61 chapter;

62 (19) "Governmental entity", the state, any political subdivision thereof,
63 any instrumentality of any one or more of the foregoing which is wholly owned by
64 this state and one or more other states or political subdivisions and any
65 instrumentality of this state or any political subdivision thereof and one or more
66 other states or political subdivisions;

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

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

71 (22) (a) As to initial claims filed after December 31, 1990, "insured
72 worker", a worker who has been paid wages for insured work in the amount of
73 one thousand dollars or more in at least one calendar quarter of such worker's
74 base period and total wages in the worker's base period equal to at least one and
75 one-half times the insured wages in that calendar quarter of the base period in
76 which the worker's insured wages were the highest, or in the alternative, a
77 worker who has been paid wages in at least two calendar quarters of such
78 worker's base period and whose total base period wages are at least one and
79 one-half times the maximum taxable wage base, taxable to any one employer, in
80 accordance with subsection 2 of section 288.036. For the purposes of this
81 definition, "wages" shall be considered as wage credits with respect to any benefit

82 year, only if such benefit year begins subsequent to the date on which the
83 employing unit by which such wages were paid has become an employer;

84 (b) As to initial claims filed after December 31, 2004, wages for insured
85 work in the amount of one thousand two hundred dollars or more, after December
86 31, 2005, one thousand three hundred dollars or more, after December 31, 2006,
87 one thousand four hundred dollars or more, after December 31, 2007, one
88 thousand five hundred dollars or more in at least one calendar quarter of such
89 worker's base period and total wages in the worker's base period equal to at least
90 one and one-half times the insured wages in that calendar quarter of the base
91 period in which the worker's insured wages were the highest, or in the
92 alternative, a worker who has been paid wages in at least two calendar quarters
93 of such worker's base period and whose total base period wages are at least one
94 and one-half times the maximum taxable wage base, taxable to any one employer,
95 in accordance with subsection 2 of section 288.036;

96 (23) ["Lessor", in a lease, the party granting the use of equipment, with
97 or without a driver to another;

98 (24)] "Misconduct", an act of wanton or willful disregard of the employer's
99 interest, a deliberate violation of the employer's rules, a disregard of standards
100 of behavior which the employer has the right to expect of his or her employee, or
101 negligence in such degree or recurrence as to manifest culpability, wrongful
102 intent or evil design, or show an intentional and substantial disregard of the
103 employer's interest or of the employee's duties and obligations to the employer;

104 [(25)] (24) "Referee", a representative of the division designated to serve
105 on an appeals tribunal;

106 [(26)] (25) "State" includes, in addition to the states of the United States
107 of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the
108 Dominion of Canada;

109 [(27)] (26) "Temporary employee", an employee assigned to work for the
110 clients of a temporary help firm;

111 [(28)] (27) "Temporary help firm", a firm that hires its own employees
112 and assigns them to clients to support or supplement the clients' workforce in
113 work situations such as employee absences, temporary skill shortages, seasonal
114 workloads, and special assignments and projects;

115 [(29)] (28) (a) An individual shall be deemed "totally unemployed" in any
116 week during which the individual performs no services and with respect to which
117 no wages are payable to such individual;

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

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

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

134 [(30)] (29) "Waiting week", the first week of unemployment for which a
135 claim is allowed in a benefit year or if no waiting week has occurred in a benefit
136 year in effect on the effective date of a shared work plan, the first week of
137 participation in a shared work unemployment compensation program pursuant
138 to section 288.500.

139 2. The Missouri average annual wage shall be computed as of June
140 thirtieth of each year, and shall be applicable to the following calendar year. The
141 Missouri average annual wage shall be calculated by dividing the total wages
142 reported as paid for insured work in the preceding calendar year by the average
143 of mid-month employment reported by employers for the same calendar year. The
144 Missouri average weekly wage shall be computed by dividing the Missouri
145 average annual wage as computed in this subsection by fifty-two.

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

2 (1) Any employing unit which in any calendar quarter in either the
3 current or preceding calendar year paid for service in employment wages of one
4 thousand five hundred dollars or more except that for the purposes of this
5 definition, wages paid for "agricultural labor" as defined in paragraph (a) of
6 subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as
7 defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not
8 be considered;

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

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

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

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

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

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

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

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

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

40 2. (1) Notwithstanding any other provisions of this law, any employer,
41 individual, organization, partnership, corporation, other legal entity or employing
42 unit that meets the definition of "lessor employing unit", as defined in subdivision
43 (5) of this subsection, shall be liable for contributions on wages paid by the lessor
44 employing unit to individuals performing services for client lessees of the lessor

45 employing unit. Unless the lessor employing unit has timely complied with the
46 provisions of subdivision (3) of this subsection, any employer, individual,
47 organization, partnership, corporation, other legal entity or employing unit which
48 is leasing individuals from any lessor employing unit shall be jointly and
49 severally liable for any unpaid contributions, interest and penalties due pursuant
50 to this law from any lessor employing unit attributable to wages for services
51 performed for the client lessee entity by individuals leased to the client lessee
52 entity, and the lessor employing unit shall keep separate records and submit
53 separate quarterly contribution and wage reports for each of its client lessee
54 entities. Delinquent contributions, interest and penalties shall be collected in
55 accordance with the provisions of this chapter.

56 (2) Notwithstanding the provisions of subdivision (1) of this subsection,
57 any governmental entity or nonprofit organization that meets the definition of
58 "lessor employing unit", as defined in subdivision (5) of this subsection, and has
59 elected to become liable for payments in lieu of contributions as provided in
60 subsection 3 of section 288.090, shall pay the division payments in lieu of
61 contributions, interest, penalties and surcharges in accordance with section
62 288.090 on benefits paid to individuals performing services for the client lessees
63 of the lessor employing unit. If the lessor employing unit has not timely complied
64 with the provisions of subdivision (3) of this subsection, any client lessees with
65 services attributable to and performed for the client lessees shall be jointly and
66 severally liable for any unpaid payments in lieu of contributions, interest,
67 penalties and surcharges due pursuant to this law. The lessor employing unit
68 shall keep separate records and submit separate quarterly contribution and wage
69 reports for each of its client lessees. Delinquent payments in lieu of contributions,
70 interest, penalties and surcharges shall be collected in accordance with subsection
71 3 of section 288.090. The election to be liable for payments in lieu of
72 contributions made by a governmental entity or nonprofit organization meeting
73 the definition of "lessor employing unit" may be terminated by the division in
74 accordance with subsection 3 of section 288.090.

75 (3) In order to relieve a client lessees from joint and several liability and
76 the separate reporting requirements imposed pursuant to this subsection, any
77 lessor employing unit may post and maintain a surety bond issued by a corporate
78 surety authorized to do business in Missouri in an amount equivalent to the
79 contributions or payments in lieu of contributions for which the lessor employing
80 unit was liable in the last calendar year in which he or she accrued contributions

81 or payments in lieu of contributions, or one hundred thousand dollars, whichever
82 amount is the greater, to ensure prompt payment of contributions or payments
83 in lieu of contributions, interest, penalties and surcharges for which the lessor
84 employing unit may be, or becomes, liable pursuant to this law. In lieu of a
85 surety bond, the lessor employing unit may deposit in a depository designated by
86 the director, securities with marketable value equivalent to the amount required
87 for a surety bond. The securities so deposited shall include authorization to the
88 director to sell any securities in an amount sufficient to pay any contributions or
89 payments in lieu of contributions, interest, penalties and surcharges which the
90 lessor employing unit fails to promptly pay when due. In lieu of a surety bond
91 or securities as described in this subdivision, any lessor employing unit may
92 provide the director with an irrevocable letter of credit, as defined in section
93 409.5-103, RSMo, issued by any state or federally chartered financial institution,
94 in an amount equivalent to the amount required for a surety bond as described
95 in this subdivision. In lieu of a surety bond, securities or an irrevocable letter of
96 credit, a lessor employing unit may obtain a certificate of deposit issued by any
97 state or federally chartered financial institution, in an amount equivalent to the
98 amount required for a surety bond as described in this subdivision. The
99 certificate of deposit shall be pledged to the director until release by the director.
100 As used in this subdivision, the term "certificate of deposit" means a certificate
101 representing any deposit of funds in a state or federally chartered financial
102 institution for a specified period of time which earns interest at a fixed or
103 variable rate, where such funds cannot be withdrawn prior to a specified time
104 without forfeiture of some or all of the earned interest.

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

111 (5) As used in this subsection, the term "lessor employing unit" means an
112 independently established business entity, governmental entity as defined in
113 subsection 1 of section 288.030 or nonprofit organization as defined in subsection
114 3 of section 288.090 which, pursuant to a written lease agreement between the
115 lessor employing unit and the client lessees, engages in the business of providing
116 individuals to any other employer, individual, organization, partnership,

117 corporation, other legal entity or employing unit referred to in this subsection as
118 a client lessee.

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

123 3. After September 30, 1986, notwithstanding any provision of section
124 288.034, for the purpose of this law, in no event shall a for-hire motor carrier as
125 regulated by the Missouri division of motor carrier and railroad safety or whose
126 operations are confined to a commercial zone be determined to be the employer
127 of a lessor as defined in [section 288.030 or of a driver receiving remuneration
128 from a lessor] 49 CFR section 376.2(f), or of a driver receiving
129 remuneration from a lessor as defined in 49 CFR section 376.2(f),
130 provided, however, the term "for-hire motor carrier" shall in no event include an
131 organization described in Section 501(c)(3) of the Internal Revenue Code or any
132 governmental entity.

133 4. The owner or operator of a beauty salon or similar establishment shall
134 not be determined to be the employer of a person who utilizes the facilities of the
135 owner or operator but who receives neither salary, wages or other compensation
136 from the owner or operator and who pays the owner or operator rent or other
137 payments for the use of the facilities.

288.035. Notwithstanding the provisions of section 288.034, RSMo, in the
2 case of an individual who is the owner, as defined in subsection 43 of section
3 301.010, RSMo, and operator of a motor vehicle which is leased or contracted
4 with a driver to a for-hire common or contract motor vehicle carrier operating
5 within a commercial zone as defined in section 390.020 or 390.041, or operating
6 under a certificate issued by [the motor carrier and railroad safety division of the
7 department of economic development under provisions of this chapter or by the
8 interstate commerce commission] the Missouri department of transportation
9 or by the United States Department of Transportation or any of its
10 subagencies, such owner/operator shall not be deemed to be an employee,
11 provided, however, such individual owner and operator shall be deemed to be in
12 employment if the for-hire common or contract vehicle carrier is an organization
13 described in section 501(c)(3) of the Internal Revenue Code or any governmental
14 entity.

288.036. 1. "Wages" means all remuneration, payable or paid, for

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

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

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

21 (b) Medical and hospitalization expenses in connection with sickness or
22 accident disability; or

23 (c) Death;

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

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

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

36 (b) Under or to an annuity plan which, at the time of such payments,
37 meets the requirements of section 404(a)(2) of the Federal Internal Revenue Code

38 (26 U.S.C.A. Sec. 404);

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

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

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

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

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

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

74 principal, interest, and administrative expenses related to financial agreements
75 under subdivision (17) of subsection 2 of section 288.330, or the principal,
76 interest, and administrative expenses related to a combination of Title XII
77 advances, credit instruments, and financial agreements] less the principal,
78 interest, and administrative expenses related to any credit instrument
79 issued under section 288.030, and less the principal, interest, and
80 administrative expenses related to any financial agreements under
81 subdivision (17) of subsection 2 of section 288.330. When the [September
82 thirtieth unemployment compensation trust fund balance, or, if the] average
83 balance[, less any federal advances] of the unemployment compensation trust
84 fund of the four preceding quarters (September thirtieth, June thirtieth, March
85 thirty-first, and December thirty-first of the preceding calendar year) [is less any
86 outstanding federal Title XII advances received pursuant to section 288.330], as
87 so determined is:

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

90 (2) Six hundred fifty million or more, then the state taxable wage base for
91 the subsequent calendar year shall be decreased by five hundred dollars. In no
92 event, however, shall the state taxable wage base increase beyond twelve
93 thousand five hundred dollars, or decrease to less than seven thousand
94 dollars. For calendar year 2009, the tax wage base shall be twelve thousand five
95 hundred dollars. For calendar year 2010 and each calendar year thereafter, in
96 no event shall the state taxable wage base increase beyond thirteen thousand
97 dollars, or decrease to less than seven thousand dollars.

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

288.038. [With respect to initial claims filed during calendar years 2004
2 and 2005, the "maximum weekly benefit amount" means four percent of the total
3 wages paid to an eligible insured worker during that quarter of the worker's base
4 period in which the worker's wages were the highest, but the maximum weekly
5 benefit amount shall not exceed two hundred fifty dollars in the calendar years
6 2004 and 2005.] With respect to initial claims filed during calendar [years] year

7 2006 [and 2007], the "maximum weekly benefit amount" means three and
8 three fourths percent of the total wages paid to an eligible insured
9 worker during that quarter of the worker's base period in which the
10 worker's wages were the highest. With respect to initial claims filed
11 during calendar year 2007 and each calendar year thereafter, the
12 "maximum weekly benefit amount" means [three and three-fourths] four percent
13 of the [total] average quarterly wages paid to an eligible insured worker during
14 [that quarter] the two highest quarters of the worker's base period in which
15 the worker's wages were the highest[, but]. The maximum weekly benefit amount
16 shall not exceed two hundred seventy dollars in calendar year 2006 and the
17 maximum weekly benefit amount shall not exceed two hundred eighty dollars in
18 calendar year 2007. With respect to initial claims filed during calendar year 2008
19 and each calendar year thereafter, [the "maximum weekly benefit amount" means
20 four percent of the total wages paid to an eligible insured worker during the
21 average of the two highest quarters of the worker's base period, but] the
22 maximum weekly benefit amount shall not exceed three hundred dollars in
23 calendar year 2008, three hundred ten dollars in calendar year 2009, three
24 hundred twenty dollars in calendar year 2010, and each calendar year thereafter.
25 If such benefit amount is not a multiple of one dollar, such amount shall be
26 reduced to the nearest lower full dollar amount.

288.040. 1. A claimant who is unemployed and has been determined to
2 be an insured worker shall be eligible for benefits for any week only if the deputy
3 finds that:

4 (1) The claimant has registered for work at and thereafter has continued
5 to report at an employment office in accordance with such regulations as the
6 division may prescribe;

7 (2) The claimant is able to work and is available for work. No person
8 shall be deemed available for work unless such person has been and is actively
9 and earnestly seeking work. Upon the filing of an initial or renewed claim, and
10 prior to the filing of each weekly claim thereafter, the deputy shall notify each
11 claimant of the number of work search contacts required to constitute an active
12 search for work. No person shall be considered not available for work, pursuant
13 to this subdivision, solely because he or she is a substitute teacher or is on jury
14 duty. A claimant shall not be determined to be ineligible pursuant to this
15 subdivision because of not actively and earnestly seeking work if:

16 (a) The claimant is participating in training approved pursuant to Section

17 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

18 (b) The claimant is temporarily unemployed through no fault of his or her
19 own and has a definite recall date within eight weeks of his or her first day of
20 unemployment; however, upon application of the employer responsible for the
21 claimant's unemployment, such eight-week period may be extended not to exceed
22 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
24 directed by the deputy, but at least once every four weeks, except that a claimant
25 shall be exempted from the reporting requirement of this subdivision if:

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

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

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

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

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

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

53 claimant claims benefits;

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

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

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

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

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

67 3. (1) Benefits based on "service in employment", defined in subsections
68 7 and 8 of section 288.034, shall be payable in the same amount, on the same
69 terms and subject to the same conditions as compensation payable on the basis
70 of other service subject to this law; except that:

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

81 (b) With respect to services performed in any capacity (other than
82 instructional, research, or principal administrative capacity) for an educational
83 institution, benefits shall not be paid on the basis of such services to any
84 individual for any week which commences during a period between two successive
85 academic years or terms if such individual performs such services in the first of
86 such academic years or terms and there is a contract or a reasonable assurance
87 that such individual will perform such services in the second of such academic
88 years or terms;

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

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

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

113 4. (1) A claimant shall be ineligible for waiting week credit, benefits or
114 shared work benefits for any week for which he or she is receiving or has received
115 remuneration exceeding his or her weekly benefit amount or shared work benefit
116 amount in the form of:

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

119 (b) A governmental or other pension, retirement or retired pay, annuity,
120 or other similar periodic payment which is based on the previous work of such
121 claimant to the extent that such payment is provided from funds provided by a
122 base period or chargeable employer pursuant to a plan maintained or contributed
123 to by such employer; but, except for such payments made pursuant to the Social
124 Security Act or the Railroad Retirement Act of 1974 (or the corresponding

125 provisions of prior law), the provisions of this paragraph shall not apply if the
126 services performed for such employer by the claimant after the beginning of the
127 base period (or remuneration for such services) do not affect eligibility for or
128 increase the amount of such pension, retirement or retired pay, annuity or similar
129 payment.

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

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

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

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

160 (a) The claimant is not participating in or financing or directly interested

161 in the labor dispute which caused the stoppage of work; and

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

166 (2) "Stoppage of work" as used in this subsection means a substantial
167 diminution of the activities, production or services at the establishment, plant,
168 factory or premises of the employing unit. This definition shall not apply to a
169 strike where the employees in the bargaining unit who initiated the strike are
170 participating in the strike. Such employees shall not be eligible for waiting week
171 credit or benefits during the period when the strike is in effect, regardless of
172 diminution, unless the employer has been found guilty of an unfair labor practice
173 by the National Labor Relations Board or a federal court of law for an act or
174 actions preceding or during the strike.

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

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

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

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

197 9. The directors of the division of employment security and the
198 division of workforce development shall submit to the governor, the
199 speaker of the house of representatives, and the president pro tem of
200 the senate no later than October 15, 2006, a report outlining their
201 recommendations for how to improve work search verification and
202 claimant re-employment activities. The recommendations shall include,
203 but not limited to how to best utilize "greathires.org", and how to
204 reduce the average duration of unemployment insurance claims. Each
205 calendar year thereafter, the directors shall submit a report containing
206 their recommendations on these issues by December thirty-first of each
207 year.

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

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

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

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

24 [5. For this section to be applicable, testing] 4. Test results shall be
25 [conducted only if sufficient cause exists to suspect alcohol or controlled

26 substance use by the claimant. If sufficient cause exists to suspect prior alcohol
27 or controlled substance use by the claimant, or] admissible if the employer's
28 policy clearly states [that there will] an employee may be subject to random,
29 preemployment, reasonable suspicion or post-accident testing[, then
30 testing of the claimant may be conducted randomly.

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

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

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

55 [8.] 6. All specimen collection [and testing] for drugs and alcohol under
56 this chapter shall be performed in accordance with the procedures provided for
57 by the United States Department of Transportation rules for workplace drug and
58 alcohol testing compiled at 49 C.F.R., Part 40. Any employer that performs drug
59 testing or specimen collection shall use chain-of-custody procedures established
60 by regulations of the United States Department of Transportation. "Specimen"
61 means tissue, fluid, or a product of the human body capable of revealing the

62 presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the
63 methodology of tracking specified materials or substances for the purpose of
64 maintaining control and accountability from initial collection to final disposition
65 for all such materials or substances, and providing for accountability at each
66 stage in handling, testing, and storing specimens and reporting test results.

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

78 [10.] 8. Use of a controlled substance as defined under section 195.010,
79 RSMo, under and in conformity with the lawful order of a healthcare practitioner,
80 shall not be deemed to be misconduct connected with work for the purposes of this
81 section.

82 [11.] 9. This section shall have no effect on employers who do not avail
83 themselves of the requirements and regulations for alcohol and controlled drug
84 testing determinations that are required to affirm misconduct connected with
85 work findings.

86 [12.] 10. Any employer that initiates an alcohol and drug testing policy
87 after January 1, 2005, shall ensure that at least sixty days elapse between a
88 general one-time notice to all employees that an alcohol and drug testing
89 workplace policy is being implemented and the effective date of the program.

90 [13. (1) In applying provisions of this chapter, it is the intent of the
91 legislature to reject and abrogate previous case law interpretations of "misconduct
92 connected with work" requiring a finding of evidence of impairment of work
93 performance, including, but not limited to, the holdings contained in Baldor
94 Electric Company v. Raylene Reasoner and Missouri Division of Employment
95 Security, 66 S.W.3d 130 (Mo.App. E.D. 2001).

96 (2) In determining whether or not misconduct connected with work has
97 occurred, neither the state, any agency of the state, nor any court of the state of

98 Missouri shall require a finding of evidence of impairment of work performance.
99 14.] 11. Notwithstanding any provision of this chapter to the contrary,
100 any claimant found to be in violation of this section shall be subject to the
101 cancellation of all or part of the claimants wage credits as provided by
102 [subdivision (2) of] subsection 2 of section 288.050.

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

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

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

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

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

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

19 (c) If the deputy finds the individual quit work, which would have been
20 determined not suitable in accordance with paragraphs (a) and (b) of subdivision

21 (3) of this subsection, within twenty-eight calendar days of the first day worked;

22 (d) As to initial claims filed after December 31, 1988, if the claimant
23 presents evidence supported by competent medical proof that she was forced to
24 leave her work because of pregnancy, notified her employer of such necessity as
25 soon as practical under the circumstances, and returned to that employer and
26 offered her services to that employer as soon as she was physically able to return
27 to work, as certified by a licensed and practicing physician, but in no event later
28 than ninety days after the termination of the pregnancy. An employee shall have
29 been employed for at least one year with the same employer before she may be
30 provided benefits pursuant to the provisions of this paragraph;

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

35 (3) That the claimant failed without good cause either to apply for
36 available suitable work when so directed by [the] a deputy of the division or
37 designated staff of an employment office as defined in subsection 16 of
38 section 288.030, or to accept suitable work when offered the claimant, either
39 through the division or directly by an employer by whom the individual was
40 formerly employed, or to return to the individual's customary self-employment,
41 if any, when so directed by the deputy. An offer of work shall be rebuttably
42 presumed if an employer notifies the claimant in writing of such offer by sending
43 an acknowledgment via any form of certified mail issued by the United States
44 Postal Service stating such offer to the claimant at the claimant's last known
45 address. Nothing in this subdivision shall be construed to limit the means by
46 which the deputy may establish that the claimant has or has not been sufficiently
47 notified of available work.

48 (a) In determining whether or not any work is suitable for an individual,
49 the division shall consider, among other factors and in addition to those
50 enumerated in paragraph (b) of this subdivision, the degree of risk involved to the
51 individual's health, safety and morals, the individual's physical fitness and prior
52 training, the individual's experience and prior earnings, the individual's length
53 of unemployment, the individual's prospects for securing work in the individual's
54 customary occupation, the distance of available work from the individual's
55 residence and the individual's prospect of obtaining local work; except that, if an
56 individual has moved from the locality in which the individual actually resided

57 when such individual was last employed to a place where there is less probability
58 of the individual's employment at such individual's usual type of work and which
59 is more distant from or otherwise less accessible to the community in which the
60 individual was last employed, work offered by the individual's most recent
61 employer if similar to that which such individual performed in such individual's
62 last employment and at wages, hours, and working conditions which are
63 substantially similar to those prevailing for similar work in such community, or
64 any work which the individual is capable of performing at the wages prevailing
65 for such work in the locality to which the individual has moved, if not hazardous
66 to such individual's health, safety or morals, shall be deemed suitable for the
67 individual;

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

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

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

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

80 2. If a deputy finds that a claimant has been discharged for misconduct
81 connected with the claimant's work, such claimant shall be disqualified for
82 waiting week credit and benefits, and no benefits shall be paid nor shall the cost
83 of any benefits be charged against any employer for any period of employment
84 within the base period until the claimant has earned wages for work insured
85 under the unemployment laws of this state or any other state as prescribed in
86 this section. In addition to the disqualification for benefits pursuant to this
87 provision the division may in the more aggravated cases of misconduct, cancel all
88 or any part of the individual's wage credits, which were established through the
89 individual's employment by the employer who discharged such individual,
90 according to the seriousness of the misconduct. A disqualification provided for
91 pursuant to this subsection shall not apply to any week which occurs after the
92 claimant has earned wages for work insured pursuant to the unemployment

93 compensation laws of any state in an amount equal to six times the claimant's
94 weekly benefit amount. Should a claimant be disqualified on a second or
95 subsequent occasion within the base period or subsequent to the base
96 period the claimant shall be required to earn wages in an amount equal
97 to or in excess of six times the claimant's weekly benefit amount for
98 each disqualification.

99 3. Absenteeism or tardiness [may] shall constitute a rebuttable
100 presumption of misconduct, regardless of whether the last incident alone
101 constitutes misconduct[. In determining whether the degree of absenteeism or
102 tardiness constitutes a pattern for which misconduct may be found, the division
103 shall consider whether], if the discharge was the result of a violation of the
104 employer's attendance policy, provided the employee had received knowledge of
105 such policy prior to the occurrence of any absence or tardy upon which the
106 discharge is based.

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

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

3 2. Each eligible insured worker who is totally unemployed in any week
4 shall be paid for 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
6 shall be paid for such week a partial benefit. Such partial benefit shall be an
7 amount equal to the difference between his or her weekly benefit amount and
8 that part of his or her wages for such week in excess of twenty dollars, and, if
9 such partial benefit amount is not a multiple of one dollar, such amount shall be
10 reduced to the nearest lower full dollar amount. For calendar year 2007 and each
11 year thereafter, such partial benefit shall be an amount equal to the difference
12 between his or her weekly benefit amount and that part of his or her wages for

13 such week in excess of twenty dollars or twenty percent of his or her weekly
14 benefit amount, whichever is greater, and, if such partial benefit amount is not
15 a multiple of one dollar, such amount shall be reduced to the nearest lower full
16 dollar amount. Termination pay, severance pay or pay received by an eligible
17 insured worker who is a member of the organized militia for training or duty
18 authorized by section 502(a)(1) of Title 32, United States Code, shall not be
19 considered wages for the purpose of this subsection.

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

42 5. In the event that benefits are due a deceased person and no petition
43 has been filed for the probate of the will or for the administration of the estate
44 of such person within thirty days after his or her death, the division may by
45 regulation provide for the payment of such benefits to such person or persons as
46 the division finds entitled thereto and every such payment shall be a valid
47 payment to the same extent as if made to the legal representatives of the
48 deceased.

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

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

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

62 9. Prior to January 1, 2005, the division shall institute procedures
63 including, but not limited to, name, date of birth, and Social Security verification
64 matches for remote claims filing via the use of telephone or the Internet in
65 accordance with such regulations as the division shall prescribe. At a minimum,
66 the division shall verify the Social Security number and date of birth when an
67 individual claimant initially files for unemployment insurance benefits. If
68 verification information does not match what is on file in division databases to
69 what the individual is stating, the division shall require the claimant to submit
70 a division-approved form requesting an affidavit of eligibility prior to the payment
71 of additional future benefits. The division of employment security shall
72 cross-check unemployment compensation applicants and recipients with Social
73 Security Administration data maintained by the federal government [on the most
74 frequent basis recommended by the United States Department of Labor, or absent
75 a recommendation,] at least [monthly] weekly. The division of employment
76 security shall cross-check at least monthly unemployment compensation
77 applicants and recipients with department of revenue drivers license databases.

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

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

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

55	Percentage the Employer's Experience Rating		
56	Account is to that Employer's Average Annual Payroll		
57	Equals or Exceeds	Less Than	Contribution Rate
58	-----	-27.0	9.0%
59	-27.0	-26.0	8.8%
60	-26.0	-25.0	8.6%
61	-25.0	-24.0	8.4%
62	-24.0	-23.0	8.2%
63	-23.0	-22.0	8.0%
64	-22.0	-21.0	7.8%
65	-21.0	-20.0	7.6%
66	-20.0	-19.0	7.4%
67	-19.0	-18.0	7.2%
68	-18.0	-17.0	7.0%
69	-17.0	-16.0	6.8%
70	-16.0	-15.0	6.6%
71	-15.0	-14.0	6.4%
72	-14.0	-13.0	6.2%

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

105	12.5	13.0	0.8%
106	13.0	13.5	0.6%
107	13.5	14.0	0.4%
108	14.0	14.5	0.3%
109	14.5	15.0	0.2%
110	15.0	----	0.0%

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

120 4. Employers who have been taxed at the maximum rate pursuant to this
 121 section for two consecutive years shall have a surcharge of one-quarter percent
 122 added to their contribution rate calculated pursuant to this section. In the event
 123 that an employer remains at the maximum rate pursuant to this section for a
 124 third or subsequent year, an additional surcharge of one-quarter percent shall be
 125 annually assessed, but in no case shall [this] the surcharge authorized in this
 126 subsection cumulatively exceed one percent. Additionally, if an employer
 127 continues to remain at the maximum rate pursuant to this section an additional
 128 surcharge of one-half percent shall be assessed. In no case shall the total
 129 surcharge assessed to any employer exceed one and one-half percent in any given
 130 year.

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

8	Balance in Trust Fund	
9		Percentage

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

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

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

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

	Balance in Trust Fund		Percentage
9	More Than	[But] Equal to or Less Than	of Decrease
10			
11	\$600,000,000	\$750,000,000	7%
12	\$750,000,000		12%

13 Notwithstanding the table in this section, if the balance in the unemployment
 14 insurance compensation trust fund as calculated in this section is more than
 15 seven hundred fifty million dollars, the percentage of decrease of the employer's
 16 contribution rate calculated for the four calendar quarters of the succeeding
 17 calendar year shall be no greater than ten percent for any employer whose
 18 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 utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., Section 1321 pursuant to section 288.330, or if the fund is not utilizing moneys advanced by the federal government, then from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced under financial agreements, each employer [shall] may be assessed an amount solely for the payment of interest due on such federal advancements, or if the fund is not utilizing moneys advanced by the federal government, or in the case of issuance of credit instruments for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both. The rate shall be determined by dividing the interest due on federal advancements or if the fund is not utilizing moneys advanced by the federal government, then the principal, interest, and administrative expenses related to credit instruments, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances, or if the fund is not utilizing moneys advanced by the federal government, then the payment of principal, interest, and administrative expenses related to credit instruments, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements, shall be deposited in the special employment security fund.

38 2. If on December thirty-first of any year the money collected under [this]
39 subsection 1 of this section exceeds the amount of interest due on federal
40 advancements by one hundred thousand dollars or more, then each employer's
41 experience rating account shall be credited with an amount which bears the same
42 ratio to the excess moneys collected under this section as that employer's
43 payment collected under this section bears to the total amount collected under
44 this section. Further, if on December thirty-first of any year the moneys collected
45 under this section exceed the amount of interest due on the federal advancements
46 by less than one hundred thousand dollars, the balance shall be transferred from
47 the special employment security fund to the Secretary of the Treasury of the
48 United States to be credited to the account of this state in the unemployment
49 trust fund.

50 3. [In addition to all other contributions due under this chapter,] If the
51 fund is utilizing moneys from the proceeds of credit instruments issued under
52 section 288.330, or from the moneys advanced under financial agreements under
53 subdivision (17) of subsection 2 of section 288.330, or a combination of credit
54 instrument proceeds and moneys advanced under financial agreements each
55 employer [shall] may be assessed a credit instrument and financing agreement
56 repayment surcharge. The total of such surcharge shall be calculated as an
57 amount up to one hundred fifty percent of the amount required in the
58 twelve-month period following the due date for the payment of such surcharge for
59 the payment of the principal, interest, and administrative expenses related to
60 such credit instruments, or in the case of financial agreements for the payment
61 of principal, interest, and administrative expenses related to such financial
62 agreements, or in the case of a combination of credit instruments and financial
63 agreements for the payment of principal, interest, and administrative expenses
64 for both. The total annual surcharge to be collected shall be calculated
65 by the division as a percentage of the total statewide contributions
66 projected to be collected for the twelve months following the due date
67 of such surcharge. Each employer's proportionate share shall be the product
68 obtained by multiplying the [total statewide credit instrument and financing
69 agreement repayment surcharge by a number obtained by dividing the employer's
70 total taxable wages for the prior year by the total taxable wages in the state for
71 the prior year] percentage calculated under this subsection by the
72 employer's contributions due under this chapter for each filing period
73 during the calendar year. Each employer shall be notified by the division

74 of the amount due under this section by (January) thirtieth of each year and such
75 amount shall be considered delinquent thirty days [thereafter] after the end of
76 each calendar quarter.

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

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

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

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

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

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

22 that are material to the issues. All testimony at any hearing shall be recorded
23 but need not be transcribed unless the matter is further appealed.

24 3. Unless an appeal on a disputed determination or referred claim is
25 withdrawn, an appeals tribunal, after affording the parties reasonable
26 opportunity for fair hearing, shall affirm, modify, or reverse the determination of
27 the deputy, or shall remand the matter to the deputy with directions. In
28 addition, in any case wherein the appellant, after having been duly notified of the
29 date, time, and place of the hearing, shall fail to appear at such hearing, the
30 appeals tribunal may enter an order dismissing the appeal. The director may
31 transfer to another appeals tribunal the proceedings on an appeal determination
32 before an appeals tribunal. The parties shall be duly notified of an appeals
33 tribunal's decision or order, together with its reason therefor, which shall be
34 deemed to be the final decision or order of the division unless, within thirty days
35 after the date of notification or mailing of such decision, further appeal is
36 initiated pursuant to section 288.200; except that, within thirty days of either
37 notification or mailing of the appeals tribunal's decision or order, the appeals
38 tribunal, on its own motion, or on motion of any party to the case, may
39 reconsider any decision or order when it appears that such reconsideration is
40 essential to the accomplishment of the object and purpose of this law. The
41 authority of the appeals tribunal to reconsider any decision or order
42 under this section shall continue throughout the thirty-day time limit,
43 regardless of whether any party has initiated further appeal under
44 section 288.200 during the thirty-day period.

45 4. Unless a petition for reassessment is withdrawn or is allowed without
46 a hearing, the petitioners shall be given a reasonable opportunity for a fair
47 hearing before an appeals tribunal upon each such petition. The appeals tribunal
48 shall promptly notify the interested parties of its decision upon such petition
49 together with its reason therefor. In addition, in any case wherein the appellant,
50 after having been duly notified of the date, time, and place of the hearing, shall
51 fail to appear at such hearing, the appeals tribunal may enter an order
52 dismissing the appeal. In the absence of the filing of an application for review
53 of such decision, the decision, whether it results in a reassessment or otherwise,
54 shall become final thirty days after the date of notification or mailing thereof;
55 except that, within thirty days of either notification or mailing of the appeals
56 tribunal's decision or order, the appeals tribunal, on its own motion, or on
57 motion of any party to the case, may reconsider any decision or order when

58 it appears that such reconsideration is essential to the accomplishment of the
59 object and purposes of this law. The authority of the appeals tribunal to
60 reconsider any decision under this section shall continue throughout
61 the thirty-day time limit, regardless of whether any party has initiated
62 further appeal under section 288.200 during that thirty-day period.

63 5. Any party subject to any decision of an appeals tribunal pursuant to
64 this chapter has a right to counsel and shall be notified prior to a hearing
65 conducted pursuant to this chapter that a decision of the appeals tribunal is
66 presumptively conclusive for the purposes of this chapter as provided in section
67 288.200.

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

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

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

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

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

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

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

35 (c) In the event that any of the board members or officers of the board
36 whose signatures or facsimile signatures appear on any credit instrument shall
37 cease to be board members or officers before the delivery of such credit
38 instrument, their signatures or facsimile signatures shall be valid and sufficient
39 for all purposes as if such board members or officers had remained in office until
40 delivery of such credit instrument.

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

44 (4) The board is authorized, by offering for public negotiated sale, to issue,
45 sell, and deliver credit instruments, bearing interest at a fixed or variable rate
46 as shall be determined by the board, which shall mature no later than [three] ten
47 years after issuance, in the name of the board in an amount determined by the
48 board [not to exceed a total of four hundred fifty million dollars, less the principal
49 amount of any financing agreement entered into under subdivision (17) of this
50 subsection], provided that the unpaid principal amount of any
51 outstanding credit instruments, combined with the unpaid principal
52 amount of any financing agreement entered into under subdivision (17)
53 of this subsection, shall not exceed four hundred fifty million dollars
54 at any one time. Such credit instruments may be issued, sold, and
55 delivered for the purposes set forth in subdivision (1) of this subsection. Such
56 credit instrument may only be issued upon the approval of a resolution
57 authorizing such issuance by a simple majority of the members of the board, with
58 no other proceedings required. [No credit instrument may be outstanding
59 hereunder after January 15, 2008.]

60 (5) The board shall provide for the payment of the principal of the credit
61 instruments, any redemption premiums, the interest on the credit instruments,
62 and the costs attributable to the credit instruments being issued or outstanding

63 as provided in this chapter [subsection and in section 288.310]. Unless the
64 board directs otherwise, the credit instrument shall be repaid in the same time
65 frame and in the same amounts as would be required for loans issued pursuant
66 to 42 U.S.C. Section 1321; however, in no case shall credit instruments be
67 outstanding for more than [three] ten years [and further provided that no credit
68 instruments shall be outstanding hereunder after January 15, 2008].

69 (6) The board may irrevocably pledge money received from the credit
70 instrument and financing agreement repayment surcharge under subsection 3 of
71 section 288.128, and other money legally available to it, which is deposited in an
72 account [created] authorized for credit instrument repayment in the special
73 employment security fund, provided that the general assembly has first
74 appropriated moneys received from such surcharge and other moneys deposited
75 in such account for the payment of credit instruments.

76 (7) Credit instruments issued under this section shall not constitute debts
77 of this state or of the board or any agency, political corporation, or political
78 subdivision of this state and are not a pledge of the faith and credit of this state,
79 the board or of any of those governmental entities and shall not constitute an
80 indebtedness within the meaning of any constitutional or statutory limitation
81 upon the incurring of indebtedness. The credit instruments are payable only from
82 revenue provided for under this chapter. The credit instruments shall contain a
83 statement to the effect that:

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

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

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

96 (9) The board may prescribe the form, details, and incidents of the credit
97 instruments and make such covenants that in its judgment are advisable or
98 necessary to properly secure the payment thereof. If such credit instruments

99 shall be authenticated by the bank or trust company acting as registrar for such
100 by the manual signature of a duly authorized officer or employee thereof, the duly
101 authorized officers of the board executing and attesting such credit instruments
102 may all do so by facsimile signature provided such signatures have been duly
103 filed as provided in the uniform facsimile signature of public officials law,
104 sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the
105 board, and the provisions of section 108.175, RSMo, shall not apply to such credit
106 instruments. The board may provide for the flow of funds and the establishment
107 and maintenance of separate accounts within the special employment security
108 fund, including the interest and sinking account, the reserve account, and other
109 necessary accounts, and may make additional covenants with respect to the credit
110 instruments in the documents authorizing the issuance of credit instruments
111 including refunding credit instruments. The resolutions authorizing the issuance
112 of credit instruments may also prohibit the further issuance of credit instruments
113 or other obligations payable from appropriated moneys or may reserve the right
114 to issue additional credit instruments to be payable from appropriated moneys on
115 a parity with or subordinate to the lien and pledge in support of the credit
116 instruments being issued and may contain other provisions and covenants as
117 determined by the board, provided that any terms, provisions or covenants
118 provided in any resolution of the board shall not be inconsistent with the
119 provisions of this section.

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

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

130 (12) As determined necessary by the board the proceeds of the credit
131 instruments less the cost of issuance shall be placed in the state's unemployment
132 compensation fund and may be used for the purposes for which that fund may
133 otherwise be used. If those net proceeds are not placed immediately in the
134 unemployment compensation fund they shall be held in the special employment

135 security fund in an account designated for that purpose until they are transferred
136 to the unemployment compensation fund provided that the proceeds of refunding
137 credit instruments may be placed in an escrow account or such other account or
138 instrument as determined necessary by the board.

139 (13) The board may enter into any contract or agreement deemed
140 necessary or desirable to effectuate cost-effective financing hereunder. Such
141 agreements may include credit enhancement, credit support, or interest rate
142 agreements including, but not limited to, arrangements such as municipal bond
143 insurance; surety bonds; tax anticipation notes; liquidity facilities; forward
144 agreements; tender agreements; remarketing agreements; option agreements;
145 interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and
146 purchase agreements. Any fees or costs associated with such agreements shall
147 be deemed administrative expenses for the purposes of calculating the credit
148 instrument and financing agreement repayment surcharge under subsection 3 of
149 section 288.128. The board, with consideration of all other costs being equal,
150 shall give preference to Missouri-headquartered financial institutions, or those
151 out-of-state-based financial institutions with at least one hundred Missouri
152 employees.

153 (14) To the extent this section conflicts with other laws the provisions of
154 this section prevail. This section shall not be subject to the provisions of sections
155 23.250 to 23.298, RSMo.

156 (15) If the United States Secretary of Labor holds that a provision of this
157 subsection or of any provision related to the levy or use of the credit instrument
158 and financial agreement repayment surcharge does not conform with a federal
159 statute or would result in the loss to the state of any federal funds otherwise
160 available to it the board, in cooperation with the department of labor and
161 industrial relations, may administer this subsection, and other provisions related
162 to the credit instrument and financial agreement repayment surcharge, to
163 conform with the federal statute until the general assembly meets in its next
164 regular session and has an opportunity to amend this subsection or other
165 sections, as applicable.

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

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

171 (b) The board is authorized to enter financial agreements with any lender
172 for the purposes set forth in subdivision (1) of this subsection, or to refinance
173 other financial agreements in whole or in part, upon the approval of the simple
174 majority of the members of the board of a resolution authorizing such financial
175 agreements, with no other proceedings required. The total amount of the
176 outstanding obligation under all such agreements at any one time shall not
177 exceed the difference of four hundred fifty million dollars and the principal
178 amount of credit instruments [issued] outstanding under this subsection. In no
179 instance shall the outstanding obligation under any financial agreement continue
180 for more than [three] ten years[, and no such financial agreement, whether
181 entered into for refinancing purposes or otherwise, shall be outstanding after
182 January 15, 2008]. Repayment of obligations to lenders shall be made from the
183 special employment security fund, section 288.310, or principal incurred due
184 to the payment of unemployment benefits may be repaid from the
185 unemployment compensation fund, subject to appropriation by the general
186 assembly.

187 (c) Financial agreements entered into under this subdivision shall not
188 constitute debts of this state or of the board or any agency, political corporation,
189 or political subdivision of this state and are not a pledge of the faith and credit
190 of this state, the board or of any of those governmental entities and shall not
191 constitute an indebtedness within the meaning of any constitutional or statutory
192 limitation upon the incurring of indebtedness. The financial agreements are
193 payable only from revenue provided for under this chapter. The financial
194 agreements shall contain a statement to the effect that:

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

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

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

205 (e) The board may prescribe the form, details and incidents of the
206 financing agreements and make such covenants that in its judgment are

207 advisable or necessary to properly secure the payment thereof provided that any
208 terms, provisions or covenants provided in any such financing agreement shall
209 not be inconsistent with the provisions of this section. If such financing
210 agreements shall be authenticated by the bank or trust company acting as
211 registrar for such by the manual signature of a duly authorized officer or
212 employee thereof, the duly authorized officers of the board executing and
213 attesting such financing agreements may all do so by facsimile signature provided
214 such signatures have been duly filed as provided in the uniform facsimile
215 signature of public officials law, sections 105.273 to 105.278, RSMo, when duly
216 authorized by resolution of the board and the provisions of section 108.175,
217 RSMo, shall not apply to such financing agreements.

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

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

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

232 4. For purposes of this section, as contained in senate substitute no. 2 for
233 senate committee substitute for house substitute for house committee substitute
234 for house bill nos. 1268 and 1211, ninety-second general assembly, second regular
235 session, the revisor of statutes shall renumber subdivision (16) of subsection 2 of
236 such section as subdivision (17) of such subsection and renumber subdivision (17)
237 of subsection 2 of such section as subdivision (16) of such subsection.

288.380. 1. Any agreement by a worker to waive, release, or commute
2 such worker's rights to benefits or any other rights pursuant to this chapter or
3 pursuant to an employment security law of any other state or of the federal
4 government shall be void. Any agreement by a worker to pay all or any portion
5 of any contributions required shall be void. No employer shall directly or

6 indirectly make any deduction from wages to finance the employer's contributions
7 required from him or her, or accept any waiver of any right pursuant to this
8 chapter by any individual in his or her employ.

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

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

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

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

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

38 7. Any person who shall willfully violate any provision of this chapter, or
39 of an employment security law of any other state or of the federal government or
40 any rule or regulation, the observance of which is required under the terms of any
41 one of such laws, shall upon conviction be deemed guilty of a misdemeanor and

42 shall be punished by a fine of not less than fifty dollars nor more than one
43 thousand dollars, or by imprisonment in the county jail for not more than six
44 months, or by both such fine and imprisonment, and each such violation or each
45 day such violation continues shall be deemed to be a separate offense.

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

57 9. (1) Any individual or employer who receives or denies unemployment
58 benefits by intentionally misrepresenting, misstating, or failing to disclose any
59 material fact has committed fraud. After the discovery of facts indicating fraud,
60 a deputy shall make a written determination that the individual obtained or
61 denied unemployment benefits by fraud and that the individual must promptly
62 repay the unemployment benefits to the fund. In addition, the deputy shall
63 assess a penalty equal to twenty-five percent of the amount fraudulently obtained
64 or denied. If division records indicate that the individual or employer had a prior
65 established overpayment or record of denial due to fraud, the deputy shall, on the
66 present overpayment or determination, assess a penalty equal to one hundred
67 percent of the amount fraudulently obtained.

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

73 (3) If the individual or employer fails to repay the unemployment benefits
74 and penalty, assessed as a result of the deputy's determination that the
75 individual or employer obtained or denied unemployment benefits by fraud, such
76 sum shall be collectible in the manner provided in sections 288.160 and 288.170
77 for the collection of past due contributions. If the individual or employer fails to

78 repay the unemployment benefits that the individual or employer denied or
79 obtained by fraud, the division may offset from any future unemployment benefits
80 otherwise payable the amount of the overpayment, or may take such steps as are
81 necessary to effect payment from the individual or employer. Future benefits may
82 not be used to offset the penalty due. Money received in repayment of
83 fraudulently obtained or denied unemployment benefits and penalties shall first
84 be applied to the unemployment benefits overpaid, then to the penalty amount
85 due. Payments made toward the penalty amount due shall be credited to the
86 special employment security fund.

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

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

91 10. An individual who willfully fails to disclose amounts earned during
92 any week with respect to which benefits are claimed by him or her, willfully fails
93 to disclose or has falsified as to any fact which would have disqualified him or her
94 or rendered him or her ineligible for benefits during such week, or willfully fails
95 to disclose a material fact or makes a false statement or representation in order
96 to obtain or increase any benefit pursuant to this chapter shall forfeit all of his
97 or her benefit rights, and all of his or her wage credits accrued prior to the date
98 of such failure to disclose or falsification shall be canceled, and any benefits
99 which might otherwise have become payable to him or her subsequent to such
100 date based upon such wage credits shall be forfeited; except that, the division
101 may, upon good cause shown, modify such reduction of benefits and cancellation
102 of wage credits. It shall be presumed that such failure or falsification was willful
103 in any case in which an individual signs and certifies a claim for benefits and
104 fails to disclose or falsifies as to any fact relative to such claim.

105 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits
106 which are or may become due or payable pursuant to this chapter shall be void;
107 and such rights to benefits shall be exempt from levy, execution, attachment, or
108 any other remedy whatsoever provided for the collection of debt; and benefits
109 received by any individual, so long as they are not mingled with other funds of
110 the recipient, shall be exempt from any remedy whatsoever for the collection of
111 all debts except debts incurred for necessities furnished to such individual or the
112 individual's spouse or dependents during the time such individual was
113 unemployed. Any waiver of any exemption provided for in this subsection shall

114 be void; except that this section shall not apply to:

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

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

121 (2) (a) An individual filing a new claim for unemployment compensation
122 shall, at the time of filing such claim, disclose whether or not the individual owes
123 support obligations, as defined pursuant to paragraph (g) of this subdivision or
124 owes uncollected overissuances of food stamp coupons (as defined in Section
125 13(c)(1) of the Food Stamp Act of 1977). If any such individual discloses that he
126 or she owes support obligations or uncollected overissuances of food stamp
127 coupons, and is determined to be eligible for unemployment compensation, the
128 division shall notify the state or local support enforcement agency enforcing the
129 support obligation or the state food stamp agency to which the uncollected food
130 stamp overissuance is owed that such individual has been determined to be
131 eligible for unemployment compensation;

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

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

139 b. The amount, if any, determined pursuant to an agreement submitted
140 to the division pursuant to Section 454(20)(B)(i) of the Social Security Act by the
141 state or local support enforcement agency, unless subparagraph c. of this
142 paragraph is applicable; or the amount (if any) determined pursuant to an
143 agreement submitted to the state food stamp agency pursuant to Section
144 13(c)(3)(a) of the Food Stamp Act of 1977; or

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

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

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

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

164 (f) Deductions will be made pursuant to this section only if appropriate
165 arrangements have been made for reimbursement by the state or local support
166 enforcement agency, or the state food stamp agency, for the administrative costs
167 incurred by the division pursuant to this section which are attributable to support
168 obligations being enforced by the state or local support enforcement agency or
169 which are attributable to uncollected overissuances of food stamp coupons;

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

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

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

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

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

186 individual:

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

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

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

204 12. Any person who, by reason of the nondisclosure or misrepresentation
205 by such person or by another of a material fact, has received any sum as benefits
206 pursuant to this chapter while any conditions for the receipt of benefits imposed
207 by this chapter were not fulfilled in such person's case, or while he or she was
208 disqualified from receiving benefits, shall, in the discretion of the division, either
209 be liable to have such sums deducted from any future benefits payable to such
210 person pursuant to this chapter or shall be liable to repay to the division for the
211 unemployment compensation fund a sum equal to the amounts so received by him
212 or her[, and such sum shall be collectible in the manner provided in sections
213 288.160 and 288.170 for the collection of past due contributions].

214 13. Any person who, by reason of any error or omission or because of a
215 lack of knowledge of material fact on the part of the division, has received any
216 sum of benefits pursuant to this chapter while any conditions for the receipt of
217 benefits imposed by this chapter were not fulfilled in such person's case, or while
218 such person was disqualified from receiving benefits, shall after an opportunity
219 for a fair hearing pursuant to subsection 2 of section 288.190 have such sums
220 deducted from any further benefits payable to such person pursuant to this
221 chapter, provided that the division may elect not to process such possible

222 overpayments where the amount of same is not over twenty percent of the
223 maximum state weekly benefit amount in effect at the time the error or omission
224 was discovered. [Recovering overpaid unemployment compensation benefits
225 which are a result of error or omission on the part of the claimant shall be
226 pursued by the division through billing and setoffs against state income tax
227 refunds.]

228 14. Recovering overpaid unemployment compensation benefits
229 shall be pursued by the division against any person receiving such
230 overpaid unemployment compensation benefits through billing, setoffs
231 against state and federal tax refunds to the extent permitted by federal
232 law, intercepts of lottery winnings under section 313.321, RSMo, and
233 collection efforts as provided for in sections 288.160, 288.170, and
234 288.175.

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

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

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

15 been provided an opportunity for a fair hearing under the provision of section
16 288.190, the employer shall withhold from the employee's backpay award the
17 amount of benefits so received and shall pay such amount to the division and
18 separately designate such amount.

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

21 4. Any individual, company, association, corporation, partnership, bureau,
22 agency or the agent or employee of the foregoing who interferes with, obstructs,
23 or otherwise causes an employer to fail to comply with the provisions of
24 subsection 2 of this section shall be liable for damages in the amount of three
25 times the amount owed by the employer to the division. The division shall
26 proceed to collect such damages under the provisions of sections 288.160 and
27 288.170.

288.500. 1. There is created under this section a voluntary "Shared Work
2 Unemployment Compensation Program". In connection therewith, the division
3 may adopt rules and establish procedures, not inconsistent with this section,
4 which are necessary to administer 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
7 more employees which is designated by an employer to participate in a shared
8 work plan;

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

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

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

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

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

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

23 (8) "Shared work plan", a program for reducing unemployment under

24 which employees who are members of an affected unit share the work remaining
25 after a reduction in their normal weekly hours of work;

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

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

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

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

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

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

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

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

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

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

58 5. If any of the employees who participate in a shared work plan under
59 this section are covered by a collective bargaining agreement, the shared work

60 plan shall be approved in writing by the collective bargaining agent.

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

71 7. The division shall approve or deny a shared work plan not later than
72 the thirtieth day after the day on which the shared work plan is received by the
73 division. The division shall approve or deny a plan in writing. If the division
74 denies a plan, the division shall notify the employer of the reasons for the
75 denial. Approval or denial of a plan by the division shall be final and such
76 determination shall be subject to review in the manner otherwise provided by
77 law. If approval of a plan is denied by the division, the employer may submit a
78 new plan to the division for consideration no sooner than forty-five calendar days
79 following the date on which the division disapproved the employer's previously
80 submitted plan.

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

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

92 10. An employer may modify a shared work plan created under this
93 section to meet changed conditions if the modification conforms to the basic
94 provisions of the shared work plan as originally approved by the division. The
95 employer shall report the changes made to the plan in writing to the division at

96 least seven days before implementing such changes. The division shall reevaluate
97 the shared work plan and may approve the modified shared work plan if it meets
98 the requirements for approval under subsection 4 of this section. The approval
99 of a modified shared work plan shall not, under any circumstances, affect the
100 expiration date originally set for the shared work plan. If modifications cause the
101 shared work plan to fail to meet the requirements for approval, the division shall
102 deny approval of the modifications as provided in subsection 7 of this section.

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

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

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

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

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

120 (4) The individual has served a "waiting week" as defined in section
121 288.030.

122 13. A waiting week served under the provisions of subdivision (3) of
123 subsection 1 of section 288.040 shall serve to meet the requirements of
124 subdivision (4) of subsection 12 of this section and a waiting week served under
125 the provisions of subdivision (4) of subsection 12 of this section shall serve to
126 meet the requirements of section 288.040. Notwithstanding any other provisions
127 of this chapter, an individual who files a new initial claim during the pendency
128 of the twelve-month period in which a shared work plan is in effect shall serve
129 a waiting week whether or not the individual has served a waiting week under
130 this subsection.

131 14. The division shall not deny shared work benefits for any week to an

132 otherwise eligible individual by reason of the application of any provision of this
133 chapter that relates to availability for work, active search for work, or refusal to
134 apply for or accept work with an employer other than the participating employer
135 under the plan.

136 15. The division shall pay an individual who is eligible for shared work
137 benefits under this section a weekly shared work benefit amount equal to the
138 individual's regular weekly benefit amount for a period of total unemployment
139 less any deductible amounts under this chapter except wages received from any
140 employer, multiplied by the full percentage of reduction in the individual's hours
141 as set forth in the employer's shared work plan. If the shared work benefit
142 amount calculated under this subsection is not a multiple of one dollar, the
143 division shall round the amount so calculated to the next lowest multiple of one
144 dollar. An individual shall be ineligible for shared work benefits for any week in
145 which the individual performs paid work for the participating employer in excess
146 of the reduced hours established under the shared work plan.

147 16. An individual shall not be entitled to receive shared work benefits and
148 regular unemployment compensation benefits in an aggregate amount which
149 exceeds the maximum total amount of benefits payable to that individual in a
150 benefit year as provided under section 288.038. Notwithstanding any other
151 provisions of this chapter, an individual shall not be eligible to receive shared
152 work benefits for more than twenty-six calendar weeks during the twelve-month
153 period of the shared work plan. No week shall be counted as a week of
154 unemployment for the purposes of this subsection unless it occurs within the
155 twelve-month period of the shared work plan.

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

160 18. An individual who has received all of the shared work benefits and
161 regular unemployment compensation benefits available in a benefit year is an
162 exhaustee under section 288.062 and is entitled to receive extended benefits
163 under section 288.062 if the individual is otherwise eligible under that section.

290.595. 1. As used in this section the term "proper authorities"
2 shall mean public authorities or authorities of the employer, but shall
3 not include any individual who engaged in the reported illegal conduct.

4 2. Existing common law is hereby codified regarding the public

5 policy exceptions to the at-will employment doctrine based on an
6 employee's whistle-blowing or refusal to commit an illegal act.

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

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

16 (2) The employee was discharged; and

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

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

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

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

28 (3) The employee was discharged; and

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

Section B. The provisions of this act shall become effective on October 1,
2 2006.

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