

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1544
95TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, February 25, 2010, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4246S.04C

AN ACT

To repeal sections 288.062 and 288.500, RSMo, and to enact in lieu thereof two new sections relating to unemployment compensation, with an emergency clause.

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

Section A. Sections 288.062 and 288.500, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 288.062 and 288.500, to
3 read as follows:

288.062. 1. As used in this section, unless the context clearly requires
2 otherwise:

3 (1) "Extended benefit period" means a period which begins with the third
4 week after a week for which there is a state "on" indicator, and ends with either
5 of the following weeks, whichever occurs later:

6 (a) The third week after the first week for which there is a state "off"
7 indicator; or

8 (b) The thirteenth consecutive week of such period; provided, that no
9 extended benefit period may begin by reason of a state "on" indicator before the
10 fourteenth week following the end of a prior extended benefit period which was
11 in effect with respect to this state;

12 (2) There is a "state 'on' indicator" for this state for a week if the director
13 determines, in accordance with the regulations of the United States Secretary of
14 Labor, that for the period consisting of such week and the immediately preceding
15 twelve weeks, the rate of insured unemployment (not seasonally adjusted) under
16 this law:

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

17 (a) Equalled or exceeded one hundred twenty percent of the average of
18 such rates for the corresponding thirteen-week period ending in each of the
19 preceding two calendar years; **and**

20 (b) Equalled or exceeded four percent for weeks beginning prior to or on
21 September 25, 1982, or five percent for weeks beginning after September 25,
22 1982; except that, if the rate of insured unemployment as contemplated in this
23 subdivision equals or exceeds five percent for weeks beginning prior to or on
24 September 25, 1982, or six percent for weeks beginning after September 25, 1982,
25 the determination of an "on" indicator shall be made under this subdivision as if
26 this subdivision did not contain the provisions of paragraph (a) of this
27 subdivision; **[and] or**

28 (c) With respect to weeks of unemployment beginning on or after February
29 1, 2009, and ending on or before **[December 5, 2009] the week ending four**
30 **weeks prior to the last week of unemployment for which one hundred**
31 **percent federal sharing is available under the provisions of Public Law**
32 **111-5, Section 2005(a) or March 3, 2011, whichever should occur first:**

33 a. The average rate of total unemployment in the state (seasonally
34 adjusted), as determined by the United States Secretary of Labor, for the period
35 consisting of the most recent three months for which data for all states are
36 published before the close of such week equals or exceeds six and one-half
37 percent; and

38 b. The average rate of total unemployment in the state (seasonally
39 adjusted), as determined by the United States Secretary of Labor, for the
40 three-month period referred to in subparagraph a. of this paragraph, equals or
41 exceeds one hundred and ten percent of such average for either or both of the
42 corresponding three-month periods ending in the two preceding calendar years;

43 (3) There is a "state 'off' indicator" for this state for a week if the director
44 determines, in accordance with the regulations of the United States Secretary of
45 Labor, that for the period consisting of such week and the immediately preceding
46 twelve weeks, the rate of insured unemployment (not seasonally adjusted) under
47 this law:

48 (a) Was less than one hundred twenty percent of the average of such rates
49 for the corresponding thirteen-week period ending in each of the preceding two
50 calendar years; or

51 (b) Was less than four percent (five percent for weeks beginning after
52 September 25, 1982); except, there shall not be an "off" indicator for any week in

53 which an "on" indicator as contemplated in paragraph (b) of subdivision (2) of this
54 subsection exists;

55 (4) "Rate of insured unemployment", for the purposes of subdivisions (2)
56 and (3) of this subsection, means the percentage derived by dividing:

57 (a) The average weekly number of individuals filing claims for regular
58 compensation in this state for weeks of unemployment with respect to the most
59 recent thirteen-consecutive-week period, as determined by the director on the
60 basis of his or her reports to the United States Secretary of Labor, by

61 (b) The average monthly employment covered under this law for the first
62 four of the most recent six completed calendar quarters ending before the end of
63 such thirteen-week period;

64 (5) "Regular benefits" means benefits payable to an individual under this
65 law or under any other state law (including benefits payable to federal civilian
66 employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85) other than
67 extended benefits;

68 (6) "Extended benefits" means benefits (including benefits payable to
69 federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85)
70 payable to an individual under the provisions of this section for weeks of
71 unemployment in his or her eligibility period;

72 (7) "Eligibility period" of an individual means the period consisting of the
73 weeks in his or her benefit year which begin in an extended benefit period and,
74 if his or her benefit year ends within such extended benefit period, any weeks
75 thereafter which begin in such period;

76 (8) "Exhaustee" means an individual who, with respect to any week of
77 unemployment in his or her eligibility period:

78 (a) Has received, prior to such week, all of the regular benefits that were
79 available to him or her under this law or any other state law (including
80 dependents' allowances and benefits payable to federal civilian employees and
81 ex-servicemen under 5 U.S.C. Chapter 85) in his or her current benefit year that
82 includes such week; provided, that, for the purposes of this paragraph, an
83 individual shall be deemed to have received all of the regular benefits that were
84 available to him or her although as a result of a pending appeal with respect to
85 wages or employment, or both, that were not considered in the original monetary
86 determination in his or her benefit year, he may subsequently be determined to
87 be entitled to added regular benefits; or

88 (b) Has received, prior to such week, all the regular compensation

89 available to him or her in his or her current benefit year that includes such week
90 under the unemployment compensation law of the state in which he or she files
91 a claim for extended compensation or the unemployment compensation law of any
92 other state after a cancellation of some or all of his or her wage credits or the
93 partial or total reduction of his or her right to regular compensation; or

94 (c) His or her benefit year having expired prior to such week, he or she
95 has insufficient wages or employment, or both, on the basis of which he or she
96 could establish in any state a new benefit year that would include such week, or
97 having established a new benefit year that includes such week, he or she is
98 precluded from receiving regular compensation by reason of a state law provision
99 which meets the requirement of section 3304(a)(7) of the Internal Revenue Code
100 of 1954; and

101 (d) a. Has no right to unemployment benefits or allowances, as the case
102 may be, under the Railroad Unemployment Insurance Act, the Trade Expansion
103 Act of 1962, the Automotive Products Trade Act of 1965 and such other federal
104 laws as are specified in regulations issued by the United States Secretary of
105 Labor; and

106 b. Has not received and is not seeking unemployment benefits under the
107 unemployment compensation law of Canada; but if he or she is seeking such
108 benefits and the appropriate agency finally determines that he or she is not
109 entitled to benefits under such law he or she is considered an exhaustee;

110 (9) "State law" means the unemployment insurance law of any state,
111 approved by the United States Secretary of Labor under Section 3304 of the
112 Internal Revenue Code of 1954.

113 2. Except when the result would be inconsistent with the other provisions
114 of this section, as provided in the regulations of the director, the provisions of this
115 law which apply to claims for, or the payment of, regular benefits shall apply to
116 claims for, and the payment of, extended benefits.

117 3. An individual shall be eligible to receive extended benefits with respect
118 to any week of unemployment in his or her eligibility period only if the deputy
119 finds that with respect to such week:

120 (1) He or she is an exhaustee as defined in subdivision (8) of subsection
121 1 of this section;

122 (2) He or she has satisfied the requirements of this law for the receipt of
123 regular benefits that are applicable to individuals claiming extended benefits,
124 including not being subject to a disqualification for the receipt of benefits; except

125 that, in the case of a claim for benefits filed in another state, which is acting as
126 an agent state under the Interstate Benefits Payment Plan as provided by
127 regulation, which claim is based on benefit credits accumulated in this state,
128 eligibility for extended benefits shall be limited to the first two compensable
129 weeks unless there is an extended benefit period in effect in both this state and
130 the agent state in which the claim was filed;

131 (3) The other provisions of this law notwithstanding, as to new extended
132 benefit claims filed after September 25, 1982, an individual shall be eligible to
133 receive extended benefits with respect to any week of unemployment in his or her
134 eligibility period only if the deputy finds that the total wages in the base period
135 of his or her benefit year equal at least one and one-half times the wages paid
136 during that quarter of his or her base period in which his or her wages were
137 highest.

138 4. A claimant shall not be eligible for extended benefits following any
139 disqualification imposed under subsection 1 or 2 of section 288.050, unless
140 subsequent to the effective date of the disqualification, the claimant has been
141 employed during at least four weeks and has earned wages equal to at least four
142 times his or her weekly benefit amount.

143 5. For the purposes of determining eligibility for extended benefits, the
144 term "suitable work" means any work which is within such individual's
145 capabilities except that, if the individual furnishes satisfactory evidence that the
146 prospects for obtaining work in his or her customary occupation within a
147 reasonably short period are good, the determination of what constitutes suitable
148 work shall be made in accordance with the provisions of subdivision (3) of
149 subsection 1 of section 288.050. If a deputy finds that a person who is claiming
150 extended benefits has refused to accept or to apply for suitable work, as defined
151 in this subsection, or has failed to actively engage in seeking work subsequent to
152 the effective date of his or her claim for extended benefits, that person shall be
153 ineligible for extended benefits for the period beginning with the first day of the
154 week in which such refusal or failure occurred. That ineligibility shall remain in
155 effect until the person has been employed for at least four weeks after the week
156 in which the refusal or failure occurred and has earned wages equal to at least
157 four times his or her weekly benefit amount.

158 6. Extended benefits shall not be denied under subsection 5 of this section
159 to any individual for any week by reason of a failure to accept an offer of or apply
160 for suitable work if:

161 (1) The gross average weekly remuneration for such work does not exceed
162 the individual's weekly benefit amount plus the amount of any supplemental
163 unemployment benefits, as defined in section 501(c)(17)(d) of the Internal
164 Revenue Code, payable to such individual for such week; or

165 (2) The position was not offered to such individual in writing or was not
166 listed with the state employment service; or

167 (3) If the remuneration for the work offered is less than the minimum
168 wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as
169 amended, without regard to any exemption or any applicable state or local
170 minimum wage, whichever is the greater.

171 7. For the purposes of this section, an individual shall be considered as
172 actively engaged in seeking work during any week with respect to which the
173 individual has engaged in a systematic and sustained effort to obtain work as
174 indicated by tangible evidence which the individual provides to the division.

175 8. Extended benefits shall not be denied for failure to apply for or to
176 accept suitable work if such failure would not result in a denial of benefits under
177 subdivision (3) of subsection 1 of section 288.050 to the extent that the provisions
178 of subdivision (3) of subsection 1 of section 288.050 are not inconsistent with the
179 provisions of subsections 5 and 6 of this section.

180 9. The division shall refer any claimant entitled to extended benefits
181 under this law to any suitable work which meets the criteria established in
182 subsections 5 and 6 of this section.

183 10. Notwithstanding other provisions of this chapter to the contrary, as
184 to claims of extended benefits, subsections 4 to 9 of this section shall not apply
185 to weeks of unemployment beginning after March 6, 1993, and before January 1,
186 1995. Entitlement to extended benefits for weeks beginning after March 6, 1993,
187 and before January 1, 1995, shall be determined in accordance with provisions of
188 this chapter not excluded by this subsection.

189 11. "Weekly extended benefit amount." The weekly extended benefit
190 amount payable to an individual for a week of total unemployment in his or her
191 eligibility period shall be an amount equal to the weekly benefit amount payable
192 to him or her during his or her applicable benefit year, reduced by a percentage
193 equal to the percentage of the reduction in federal payments to states under
194 Section 204 of the Federal State Extended Unemployment Compensation Act of
195 1970, in accord with any order issued under any law of the United States. Such
196 weekly benefit amount, if not a multiple of one dollar, shall be reduced to the

197 nearest lower full dollar amount.

198 12. (1) "Total extended benefit amount." The total extended benefit
199 amount payable to any eligible individual with respect to his or her applicable
200 benefit year shall be the lesser of the following amounts:

201 (a) Fifty percent of the total amount of regular benefits which were
202 payable to him or her under this law in his or her applicable benefit year;

203 (b) Thirteen times his or her weekly benefit amount which was payable
204 to him or her under this law for a week of total unemployment in the applicable
205 benefit year.

206 (2) Notwithstanding subdivision (1) of this subsection, during any fiscal
207 year in which federal payments to states under Section 204 of the Federal State
208 Extended Unemployment Compensation Act of 1970 are reduced under any order
209 issued under any law of the United States, the total extended benefit amount
210 payable to an individual with respect to his or her applicable benefit year shall
211 be reduced by an amount equal to the aggregate of the reductions under
212 subsection 11 of this section in the weekly amounts paid to the individual.

213 (3) Notwithstanding the other provisions of this subsection, if the benefit
214 year of any individual ends within an extended benefit period, the remaining
215 balance of extended benefits that such individual would, but for this subdivision,
216 be entitled to receive in that extended benefit period, with respect to weeks of
217 unemployment beginning after the end of the benefit year, shall be reduced, but
218 not below zero, by the product of the number of weeks for which the individual
219 received trade readjustment allowances under the Trade Act of 1974, as amended,
220 within that benefit year, multiplied by the individual's weekly benefit amount for
221 extended benefits.

222 (4) (a) Effective with respect to weeks beginning in a high unemployment
223 period, subdivision (1) of this subsection shall be applied by substituting:

224 a. Eighty percent for fifty percent in paragraph (a) of subdivision (1) of
225 this subsection; and

226 b. Twenty times for thirteen times in paragraph (b) of subdivision (1) of
227 this subsection.

228 (b) For purposes of paragraph (a) of this subdivision, the term "high
229 unemployment period" means any period during which an extended benefit period
230 would be in effect if subparagraph a. of paragraph (c) of subdivision (2) of
231 subsection 1 of this section were applied by substituting eight percent for six and
232 one-half percent.

233 13. (1) Whenever an extended benefit period is to become effective in this
234 state as a result of a state "on" indicator, or an extended benefit period is to be
235 terminated in this state as a result of a state "off" indicator, the director shall
236 make an appropriate public announcement.

237 (2) Computations required by the provisions of subdivision (4) of
238 subsection 1 of this section, shall be made by the director, in accordance with
239 regulations prescribed by the United States Secretary of Labor.

 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 when
65 the reduced hours coincide with holiday earnings already committed to be paid

66 by the employer. Shared work plan benefits may not be denied in any week
67 containing a holiday for which holiday earnings are committed to be paid by the
68 employer unless the shared work benefits to be paid are for the same hours in the
69 same day as the holiday earnings.

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

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

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

91 10. An employer may modify a shared work plan created under this
92 section to meet changed conditions if the modification conforms to the basic
93 provisions of the shared work plan as originally approved by the division. The
94 employer shall report the changes made to the plan in writing to the division at
95 least seven days before implementing such changes. The division shall reevaluate
96 the shared work plan and may approve the modified shared work plan if it meets
97 the requirements for approval under subsection 4 of this section. The approval
98 of a modified shared work plan shall not, under any circumstances, affect the
99 expiration date originally set for the shared work plan. If modifications cause the
100 shared work plan to fail to meet the requirements for approval, the division shall
101 deny approval of the modifications as provided in subsection 7 of this section.

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

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

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

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

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

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

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

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

135 15. The division shall pay an individual who is eligible for shared work
136 benefits under this section a weekly shared work benefit amount equal to the
137 individual's regular weekly benefit amount for a period of total unemployment

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

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

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

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

 Section B. Because immediate action is necessary to help Missourians
2 during economic hardship, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace, and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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