

FIRST REGULAR SESSION

HOUSE BILL NO. 1059

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (141).

2124H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 143.121, RSMo, and to enact in lieu thereof ten new sections relating to leave from employment, with a referendum clause.

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

Section A. Section 143.121, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 143.121, 285.400, 285.405, 285.410, 285.411, 285.412, 285.413, 285.414, 285.415, and 285.416, to read as follows:

143.121. 1. The Missouri adjusted gross income of a resident individual shall be the taxpayer's federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayer's federal adjusted gross income:

(1) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(2) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (1) of subsection 3 of this section. The amount added pursuant to this subdivision shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(3) The amount of any deduction that is included in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount
18 deducted exceeds the amount that would have been deductible pursuant to Section 168 of the
19 Internal Revenue Code of 1986 as in effect on January 1, 2002;

20 (4) The amount of any deduction that is included in the computation of federal taxable
21 income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as
22 amended, other than the deduction allowed by Section [~~172(b)(1)(G)~~] **172(b)(1)(F)** and Section
23 [~~172(i)~~] **172(h)** of the Internal Revenue Code of 1986, as amended, for a net operating loss the
24 taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a
25 period of more than twenty years and carries backward for more than two years. Any amount
26 of net operating loss taken against federal taxable income but disallowed for Missouri income
27 tax purposes pursuant to this subdivision after June 18, 2002, may be carried forward and taken
28 against any income on the Missouri income tax return for a period of not more than twenty years
29 from the year of the initial loss; and

30 (5) For nonresident individuals in all taxable years ending on or after December 31,
31 2006, the amount of any property taxes paid to another state or a political subdivision of another
32 state for which a deduction was allowed on such nonresident's federal return in the taxable year
33 unless such state, political subdivision of a state, or the District of Columbia allows a subtraction
34 from income for property taxes paid to this state for purposes of calculating income for the
35 income tax for such state, political subdivision of a state, or the District of Columbia.

36 3. There shall be subtracted from the taxpayer's federal adjusted gross income the
37 following amounts to the extent included in federal adjusted gross income:

38 (1) Interest or dividends on obligations of the United States and its territories and
39 possessions or of any authority, commission or instrumentality of the United States to the extent
40 exempt from Missouri income taxes pursuant to the laws of the United States. The amount
41 subtracted pursuant to this subdivision shall be reduced by any interest on indebtedness incurred
42 to carry the described obligations or securities and by any expenses incurred in the production
43 of interest or dividend income described in this subdivision. The reduction in the previous
44 sentence shall only apply to the extent that such expenses including amortizable bond premiums
45 are deducted in determining the taxpayer's federal adjusted gross income or included in the
46 taxpayer's Missouri itemized deduction. The reduction shall only be made if the expenses total
47 at least five hundred dollars;

48 (2) The portion of any gain, from the sale or other disposition of property having a higher
49 adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax
50 purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is
51 considered a long-term capital gain for federal income tax purposes, the modification shall be
52 limited to one-half of such portion of the gain;

53 (3) The amount necessary to prevent the taxation pursuant to this chapter of any annuity
54 or other amount of income or gain which was properly included in income or gain and was taxed
55 pursuant to the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or
56 to a decedent by reason of whose death the taxpayer acquired the right to receive the income or
57 gain, or to a trust or estate from which the taxpayer received the income or gain;

58 (4) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the
59 extent that the same are included in federal adjusted gross income;

60 (5) The amount of any state income tax refund for a prior year which was included in the
61 federal adjusted gross income;

62 (6) The portion of capital gain specified in section 135.357 that would otherwise be
63 included in federal adjusted gross income;

64 (7) The amount that would have been deducted in the computation of federal taxable
65 income pursuant to Section 168 of the Internal Revenue Code as in effect on January 1, 2002,
66 to the extent that amount relates to property purchased on or after July 1, 2002, but before July
67 1, 2003, and to the extent that amount exceeds the amount actually deducted pursuant to Section
68 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act
69 of 2002;

70 (8) For all tax years beginning on or after January 1, 2005, the amount of any income
71 received for military service while the taxpayer serves in a combat zone which is included in
72 federal adjusted gross income and not otherwise excluded therefrom. As used in this section,
73 "combat zone" means any area which the President of the United States by Executive Order
74 designates as an area in which Armed Forces of the United States are or have engaged in combat.
75 Service is performed in a combat zone only if performed on or after the date designated by the
76 President by Executive Order as the date of the commencing of combat activities in such zone,
77 and on or before the date designated by the President by Executive Order as the date of the
78 termination of combatant activities in such zone;

79 (9) For all tax years ending on or after July 1, 2002, with respect to qualified property
80 that is sold or otherwise disposed of during a taxable year by a taxpayer and for which an
81 additional modification was made under subdivision (3) of subsection 2 of this section, the
82 amount by which additional modification made under subdivision (3) of subsection 2 of this
83 section on qualified property has not been recovered through the additional subtractions provided
84 in subdivision (7) of this subsection; ~~and~~

85 (10) **The amount contributed to the Missouri earned family and medical leave fund**
86 **established under section 285.415; and**

87 **(11)** For all tax years beginning on or after January 1, 2014, the amount of any income
88 received as payment from any program which provides compensation to agricultural producers
89 who have suffered a loss as the result of a disaster or emergency, including the:

- 90 (a) Livestock Forage Disaster Program;
- 91 (b) Livestock Indemnity Program;
- 92 (c) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish;
- 93 (d) Emergency Conservation Program;
- 94 (e) Noninsured Crop Disaster Assistance Program;
- 95 (f) Pasture, Rangeland, Forage Pilot Insurance Program;
- 96 (g) Annual Forage Pilot Program;
- 97 (h) Livestock Risk Protection Insurance Plan; and
- 98 (i) Livestock Gross Margin insurance plan.

99 4. There shall be added to or subtracted from the taxpayer's federal adjusted gross
100 income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351.

101 5. There shall be added to or subtracted from the taxpayer's federal adjusted gross
102 income the modifications provided in section 143.411.

103 6. In addition to the modifications to a taxpayer's federal adjusted gross income in this
104 section, to calculate Missouri adjusted gross income there shall be subtracted from the taxpayer's
105 federal adjusted gross income any gain recognized pursuant to Section 1033 of the Internal
106 Revenue Code of 1986, as amended, arising from compulsory or involuntary conversion of
107 property as a result of condemnation or the imminence thereof.

108 7. (1) As used in this subsection, "qualified health insurance ~~[premium]~~ premium"
109 means the amount paid during the tax year by such taxpayer for any insurance policy primarily
110 providing health care coverage for the taxpayer, the taxpayer's spouse, or the taxpayer's
111 dependents.

112 (2) In addition to the subtractions in subsection 3 of this section, one hundred percent
113 of the amount of qualified health insurance premiums shall be subtracted from the taxpayer's
114 federal adjusted gross income to the extent the amount paid for such premiums is included in
115 federal taxable income. The taxpayer shall provide the department of revenue with proof of the
116 amount of qualified health insurance premiums paid.

117 8. (1) Beginning January 1, 2014, in addition to the subtractions provided in this section,
118 one hundred percent of the cost incurred by a taxpayer for a home energy audit conducted by an
119 entity certified by the department of natural resources under section 640.153 or the
120 implementation of any energy efficiency recommendations made in such an audit shall be
121 subtracted from the taxpayer's federal adjusted gross income to the extent the amount paid for
122 any such activity is included in federal taxable income. The taxpayer shall provide the

123 department of revenue with a summary of any recommendations made in a qualified home
124 energy audit, the name and certification number of the qualified home energy auditor who
125 conducted the audit, and proof of the amount paid for any activities under this subsection for
126 which a deduction is claimed. The taxpayer shall also provide a copy of the summary of any
127 recommendations made in a qualified home energy audit to the department of natural resources.

128 (2) At no time shall a deduction claimed under this subsection by an individual taxpayer
129 or taxpayers filing combined returns exceed one thousand dollars per year for individual
130 taxpayers or cumulatively exceed two thousand dollars per year for taxpayers filing combined
131 returns.

132 (3) Any deduction claimed under this subsection shall be claimed for the tax year in
133 which the qualified home energy audit was conducted or in which the implementation of the
134 energy efficiency recommendations occurred. If implementation of the energy efficiency
135 recommendations occurred during more than one year, the deduction may be claimed in more
136 than one year, subject to the limitations provided under subdivision (2) of this subsection.

137 (4) A deduction shall not be claimed for any otherwise eligible activity under this
138 subsection if such activity qualified for and received any rebate or other incentive through a
139 state-sponsored energy program or through an electric corporation, gas corporation, electric
140 cooperative, or municipally owned utility.

141 9. The provisions of subsection 8 of this section shall expire on December 31, 2020.

**285.400. 1. The provisions of sections 285.400 to 285.416 shall be known and may
2 be cited as the "Missouri Earned Family and Medical Leave Act".**

3 2. As used in sections 285.400 to 285.416, the following terms shall mean:

**4 (1) "Average state weekly pay", the total wages earned by all employees who have
5 contributed to the fund in the past twelve months, divided by the total number of such
6 employees, the quotient of which is divided by the average number of weeks worked by all
7 employees who have contributed to the fund in the last twelve months;**

**8 (2) "Average weekly pay", the total wages earned by an employee in the past twelve
9 months, divided by the number of weeks worked by the employee in such twelve-month
10 period, or the weekly salary of the employee at the time that family or medical leave is
11 taken, whichever is greater; provided that, the average weekly pay shall never exceed the
12 average state weekly pay;**

**13 (3) "Care", includes, but is not limited to, physical care, emotional support,
14 visitation, assistance in treatment, transportation, arranging for a change in care,
15 assistance with essential daily living matters, and personal attendant services;**

**16 (4) "Child", a biological, nonbiological, adopted, or foster son or daughter; a
17 stepson or stepdaughter; a legal ward; a son or daughter of a reciprocal beneficiary; or the**

18 person to whom the employee stands in loco parentis who is under nineteen years of age
19 or who is nineteen years of age or older but incapable of self-care because of mental or
20 physical impairment;

21 (5) "Department", the department of labor and industrial relations;

22 (6) "Employee", any person performing service for remuneration;

23 (7) "Employer", any person acting directly or indirectly in the interest of an
24 employer in relation to an employee;

25 (8) "Family member", a child, parent, grandparent, grandchild, sibling, spouse,
26 reciprocal beneficiary, or household member, or any ward as that term is defined in section
27 475.010;

28 (9) "Family or medical leave", any of the following:

29 (a) Leave to bond with a minor child within the first year of the child's birth or
30 placement in connection with foster care or adoption;

31 (b) Leave to care for a family member who has a serious health condition;

32 (c) Leave due to an employee's own serious health condition; or

33 (d) Leave to assume any familial responsibility because a spouse, child, or parent
34 of an employee is on, or has been notified of an impending call to, active duty in the
35 uniformed services;

36 (10) "Fund", the Missouri earned family and medical leave fund established in
37 section 285.415;

38 (11) "Grandchild", a child of the employee's child;

39 (12) "Grandparent", a parent of the employee's parent;

40 (13) "Health care provider", any physician, hospital, health maintenance
41 organization, ambulatory surgical center, long-term care facility including those licensed
42 under chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist,
43 pharmacist, chiropractor, professional physical therapist, psychologist,
44 physician-in-training, and any other person or entity that provides health care services
45 under the authority of a license or certificate of this state or any other state or foreign
46 country;

47 (14) "Parent", a biological, nonbiological, foster, or adoptive parent; a parent-in-
48 law; a stepparent; a legal guardian; or other person who stood in loco parentis to the
49 employee when the employee was a child;

50 (15) "Parent-in-law", the parent of a reciprocal beneficiary;

51 (16) "Serious health condition", an illness, injury, impairment, or physical or
52 mental condition that involves inpatient or outpatient care in a hospital, hospice,
53 rehabilitation facility, or residential health care facility, or continuing medical treatment

54 or continuing supervision by a health care provider. The term shall include medical
55 attention, services, or counseling for victims of stalking, domestic violence, abuse, or sexual
56 assault, as such terms are defined in section 455.010, or victims of trafficking for the
57 purpose of sexual exploitation as described in section 566.209;

58 (17) "Sibling", a person related to another person by blood, adoption, or affinity
59 through a common legal or biological parent;

60 (18) "Spouse", a partner to a lawful marriage;

61 (19) "Uniformed services":

62 (a) Active and reserve components of the Army, Navy, Air Force, Marine Corps,
63 or Coast Guard of the United States;

64 (b) The Merchant Marine, the commissioned corps of the Public Health Service,
65 or the commissioned corps of the National Oceanic and Atmospheric Administration of the
66 United States; or

67 (c) The Missouri National Guard.

285.405. 1. There is hereby established the "Missouri Earned Family and Medical
2 Leave Program" to provide up to eight weeks of wage replacement benefits to employees
3 who take time off work for family or medical leave. The department shall administer and
4 implement the program and the provisions of sections 285.400 to 285.416 and shall pay
5 Missouri family or medical leave benefits as specified in such sections.

6 2. An employee shall be eligible to receive Missouri earned family or medical leave
7 program benefits equal to sixty-seven percent of his or her average weekly pay for each full
8 week during which he or she has taken family or medical leave. An employee may take
9 family or medical leave for a partial week and shall be eligible to receive only the fraction
10 of the average weekly pay that is equal to the number of days of leave taken divided by the
11 number of days for which such employee would have otherwise worked in the respective
12 week had the employee not taken family or medical leave. Any leave taken shall be in full-
13 day increments.

14 3. No more than eight weeks of Missouri earned family and medical leave benefits
15 shall be paid to an employee within any fifty-two-week period.

16 4. An employee shall file a claim for Missouri earned family and medical leave
17 benefits with the department not later than the forty-first consecutive day following the
18 first compensable day with respect to which the claim is made for benefits, which time shall
19 be extended by the department upon a showing of good cause. If a first claim is not
20 complete, the claim form shall be returned to the employee for completion, and it shall be
21 completed and returned not later than the tenth consecutive day after the date it was

22 verifiably sent by the department to the employee; except that, such time shall be extended
23 by the department upon a showing of good cause.

24 **5. No employee shall be eligible for Missouri earned family and medical leave**
25 **program benefits with respect to any day:**

26 **(1) That he or she is eligible to receive unemployment compensation benefits under**
27 **chapter 288 or under an unemployment compensation act of any other state or of the**
28 **federal government; or**

29 **(2) That he or she has received, or is entitled to receive, any other benefits under**
30 **chapter 287.**

31 **6. No employee shall be eligible for Missouri earned family and medical leave**
32 **benefits until such employee has paid into the Missouri earned family and medical leave**
33 **fund for twenty-six weeks.**

34 **7. An employee who is entitled to leave under the Missouri earned family and**
35 **medical leave act and the Family and Medical Leave Act (FMLA) under 29 U.S.C. Section**
36 **2601 et seq. shall take family or medical leave under this act concurrent with leave taken**
37 **under the FMLA.**

38 **8. The first payment of Missouri family or medical leave benefits shall be made to**
39 **an employee within two weeks after the completed claim is received by the department or**
40 **the day the family or medical leave began, whichever is later. Subsequent payments shall**
41 **be made bimonthly.**

42 **9. During any period that an employee takes leave under sections 285.400 to**
43 **285.416, the employer shall maintain coverage for the employee and any family or**
44 **household member under any group health, dental, or vision plan for the duration of such**
45 **leave at the level and under the conditions coverage would have been provided if the**
46 **employee had continued in employment for the duration of such leave.**

285.410. 1. (1) An employee shall establish medical eligibility for each
2 **uninterrupted family or medical care leave period by filing a first claim for benefits**
3 **supported by the certificate of a treating physician or health care provider that establishes**
4 **the serious health condition of the family member that warrants the care of the employee**
5 **or that establishes the serious health condition of the employee. For subsequent periods**
6 **of uninterrupted leave after the period covered by the initial certificate or any preceding**
7 **continued claim, a claimant shall file a continued claim for those benefits supported by the**
8 **certificate of a treating physician or health care provider.**

9 **(2) For employees seeking leave in order to assume a familial responsibility due to**
10 **a spouse, child, or parent being on active duty in the uniformed services, eligibility for**

11 leave shall be established by providing, in a manner satisfactory to the department, proof
12 of the family member being on active duty.

13 (3) For employees seeking leave due to a serious health condition related to seeking
14 medical attention, services, or counseling for victims of stalking, domestic violence, abuse,
15 or sexual assault, as such terms are defined in section 455.010, or victims of trafficking for
16 purposes of sexual exploitation as described in section 566.209, the certificate required by
17 subdivision (1) of this subsection may be provided by any of the following:

18 (a) A treating physician;

19 (b) A health care provider;

20 (c) A court that has jurisdiction over a judicial proceeding relating to the serious
21 health condition of the employee or the serious health condition of the family member of
22 the employee;

23 (d) A law enforcement officer with knowledge of the serious health condition of the
24 employee or the serious health condition of the family member of the employee; or

25 (e) A lawyer or victim advocate with knowledge of the serious health condition of
26 the employee or the serious health condition of the family member of the employee.

27 2. The certificates required under subsection 1 of this section shall be developed by
28 the department. In order to establish medical eligibility of the serious health condition of
29 the family member that warrants the care of the employee or to establish medical eligibility
30 of the serious health condition of the employee, the information on the certificate shall be
31 within the physician's or health care provider's knowledge and shall be based on a physical
32 examination and documented medical history of the family member or employee. The
33 certificate shall contain all of the following:

34 (1) A diagnosis and diagnostic code prescribed in the International Classification
35 of Diseases or, if no diagnosis has yet been obtained, a detailed statement of symptoms;

36 (2) The date, if known, on which the condition commenced;

37 (3) The probable duration of the condition;

38 (4) An estimate of the amount of time that the physician or health care provider
39 believes the employee needs to care for the family member or himself or herself; and

40 (5) If applicable, a statement that the serious health condition warrants the
41 participation of the employee to provide care for his or her family member.

42 3. The department shall develop a certificate form that is separate and distinct from
43 the certificate required in subsection 1 of this section for an employee taking leave to bond
44 with a minor child within the first year of the child's birth or placement in connection with
45 foster care or adoption.

46 **4. Any claim of an individual who obtains care and treatment outside the state shall**
47 **be supported by a certificate of a treating physician or health care provider duly licensed**
48 **or certified by the state or foreign country in which the claimant is receiving care and**
49 **treatment.**

50 **5. Nothing in this section shall be construed to preclude the department from**
51 **requesting additional medical evidence to supplement any claim. The department may**
52 **require that the additional evidence include any or all of the following:**

53 **(1) Identification of diagnoses;**

54 **(2) Identification of symptoms;**

55 **(3) A statement setting forth the facts of the serious health condition of the**
56 **employee or such employee's family member, which shall be completed by any of the**
57 **following individuals:**

58 **(a) The physician or health care provider treating the employee or family member**
59 **of the employee;**

60 **(b) The registrar, authorized medical officer, or other duly authorized official of**
61 **the hospital or health care facility treating the employee or family member of the employee;**
62 **or**

63 **(c) An examining physician or other representative of the department; or**

64 **(4) An affidavit from an employee averring that the employee or such employee's**
65 **spouse gave birth to a child, is in the adoption process, or received a child in connection**
66 **with foster care.**

285.411. Employees shall make reasonable efforts to provide at least thirty days'
2 **advance notice to their employer before family or medical leave is to begin. If thirty days'**
3 **notice is not practicable, notice shall be given to the employer as soon as practicable.**

285.412. 1. Except as provided in subsection 4 of this section, an employee may file
2 **a notice of appeal from any determination of eligibility for benefits made by the**
3 **department by mail or in person within thirty days after the date on which a copy of the**
4 **department's decision was received by the employee. Upon receipt of the notice of appeal,**
5 **the department shall request the assignment of an administrative law judge in accordance**
6 **with chapter 536 to conduct a hearing and issue a proposed decision and order. The**
7 **hearing shall be conducted in accordance with chapter 536.**

8 **2. The administrative law judge's proposed decision and order shall be final and**
9 **not subject to further appeal unless, within thirty days after the decision is served on the**
10 **interested parties, a party files a petition for judicial review as provided in chapter 536.**

11 **3. A determination of the amount of benefits payable under sections 285.400 to**
12 **285.416 shall not serve as a basis for appeal under this section. However, the**

13 determination shall be subject to request by the employee on family or medical leave for
14 redetermination by the department at any time within one year from the date of delivery
15 or mailing of such determination or any redetermination thereof. A redetermination shall
16 be furnished to the individual in writing.

17 4. A denial of benefits shall become final in the absence of timely appeal therefrom.
18 The department may redetermine a denial of benefits at any time within one year from
19 delivery or mailing of such denial to correct an error in identity, omission of fact, or
20 misapplication of law with respect to the facts.

21 5. A determination of allowance of benefits shall become final in the absence of
22 timely appeal therefrom. The department may redetermine such allowance at any time
23 within two years following the application year in which such allowance was made in order
24 to recover any benefits for which recovery is provided under this section.

25 6. A redetermination of benefits may be made at any time for any of the following
26 reasons:

27 (1) To conform to a final court decision applicable to either an initial determination
28 or a determination of denial or allowance of benefits;

29 (2) In the event of a back pay award or settlement affecting the allowance of
30 benefits; or

31 (3) In the case of misrepresentation or willful failure to report a material fact.
32

33 Written notice of any such redetermination shall be promptly given by mail or delivered
34 to such interested parties as were notified of the initial determination of denial or
35 allowance of benefits and any new interested party or parties who, under such rule as the
36 department may adopt, would be an interested party.

285.413. 1. It shall be unlawful for any person to discharge or in any other manner
2 discriminate against an employee because the employee has made a claim for, indicated an
3 intent to make a claim for, or received Missouri earned family and medical leave benefits.

4 2. (1) Any person who violates the provisions of subsection 1 of this section shall
5 be liable to any employee of such person who is affected by the violation for such equitable
6 relief as may be appropriate, including employment, reinstatement, or promotion and for
7 damages equal to the sum of:

8 (a) The amount of:

9 a. Any wages, salary, employment benefits, or other compensation denied or lost
10 to such individual by reason of the violation; or

11 b. In a case in which wages, salary, employment benefits, or other compensation
12 have not been denied or lost to the individual, any actual monetary losses sustained by the

13 individual as a direct result of the violation, such as the cost of providing care, up to a sum
14 equal to sixty calendar days of wages or salary for the individual;

15 (b) The interest on the amount described in paragraph (a) of this subdivision, such
16 interest rate being equal to the market rate as determined by the director of the division
17 of finance under section 408.030; and

18 (c) An additional amount as liquidated damages equal to the sum of the amount
19 described in paragraph (a) of this subdivision and the interest described in paragraph (b)
20 of this subdivision; except that, if a person who has violated subsection 1 of this section
21 proves to the satisfaction of the court that the act or omission was in good faith and that
22 the person had reasonable grounds for believing that the act or omission was not a
23 violation, such court may reduce the amount of such liquidated damages.

24 (2) The court may additionally require reasonable attorney's fees, expert witness
25 fees, and other court costs to be paid by a defendant.

26 3. An action to recover the relief prescribed in subsection 2 of this section may be
27 maintained against any person in any court of competent jurisdiction by the employee
28 affected.

29 4. The department may bring an action seeking relief on behalf of an employee
30 under this section. The right to bring an action provided under subsection 3 of this section
31 shall terminate upon the filing of a complaint by the department. If any damages are
32 recovered in such action, such damages shall be held in a special deposit account and paid
33 directly to each employee affected.

34 5. An action may be brought under this section not later than three years after the
35 date of the alleged violation for which the action is brought. An action brought under this
36 section shall be considered to be commenced on the date when the complaint is filed.

285.414. 1. The department shall develop and implement an outreach program to
2 ensure that employees who may be eligible to receive Missouri earned family and medical
3 leave benefits under sections 285.400 to 285.416 are made aware of such benefits. Outreach
4 information shall explain, in an easy-to-understand manner, eligibility requirements, the
5 claims process, weekly benefit amounts, maximum benefits payable, notice and medical
6 certification requirements, reinstatement and nondiscrimination rights, confidentiality,
7 and the relationship between employment protection, leave from employment, wage
8 replacement benefits, and other laws, collective bargaining agreements, and employer
9 policies.

10 2. Not later than three years after the effective date of sections 285.400 to 285.416,
11 the state auditor shall submit to the general assembly a report on the Missouri earned

12 family and medical leave benefits paid for any month during the one-year period beginning
13 on the effective date of sections 285.400 to 285.416. The report shall include the following:

14 (1) An identification of the total number of applications for such benefits filed and
15 the average number of days between when an application is received and when a
16 determination is made;

17 (2) An identification of the total number of requests for review of an initial adverse
18 determination of eligibility for such benefits made and the average number of days
19 between when such review is requested and when a final determination of eligibility is
20 made; and

21 (3) An identification of the total number of monthly benefit claim reports for such
22 benefits filed and the average number of days between the date such report is received and
23 the date on which the initial determination of eligibility with respect to the claim report is
24 made.

285.415. 1. (1) There is hereby created in the state treasury the "Missouri Earned
2 Family and Medical Leave Fund", which shall consist of moneys collected under this
3 section. The state treasurer shall be custodian of the fund. In accordance with sections
4 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a
5 dedicated fund, and moneys in the fund shall be used solely by the department of labor and
6 industrial relations for the purpose of distributing Missouri earned family and medical
7 leave program benefits.

8 (2) The state treasurer shall invest moneys in the fund in the same manner as other
9 funds are invested. Any interest and moneys earned on such investments shall be credited
10 to the fund.

11 2. (1) In order to provide funding to implement the provisions of sections 285.400
12 to 285.410, employees shall contribute one-quarter of one percent of their average weekly
13 pay to the Missouri earned family and medical leave fund beginning January 1, 2019.

14 (2) For purposes of this section, in determining the average weekly pay of an
15 employee, the total wages of an employee shall not exceed the contribution and benefit base
16 established by the Commissioner of the Social Security Administration under 42 U.S.C.
17 Section 430.

18 (3) Notwithstanding the provisions of section 285.405 to the contrary, if there are
19 not sufficient resources in the fund, the director of the department of labor and industrial
20 relations may, at his or her discretion, reduce the benefit amount each employee is eligible
21 to receive. If the benefit amount is reduced, each employee shall receive the same percent
22 of his or her average weekly wage.

23 (4) No employee shall receive benefits from the fund until January 1, 2020.

285.416. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 285.400 to 285.415 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at an election which is hereby ordered and which shall be held and conducted on the Tuesday immediately following the first Monday in November, 2018, pursuant to the laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, and this act shall become effective when approved by a majority of the votes cast thereon at such election and not otherwise.

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