

SECOND REGULAR SESSION  
[PERFECTED]  
HOUSE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NOS. 1268 & 1211**  
**92ND GENERAL ASSEMBLY**

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Taken up for Perfection February 19, 2004.

House Substitute for House Committee Substitute for House Bill Nos. 1268 & 1211 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

4224L.04P

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**AN ACT**

To repeal sections 285.300, 288.030, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.121, 288.128, 288.270, 288.290, 288.310, and 288.330, RSMo, and to enact in lieu thereof nineteen new sections relating to employees, with penalty provisions and an emergency clause.

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

Section A. Section 285.300, 288.030, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.121, 288.128, 288.270, 288.290, 288.310, and 288.330, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as 285.300, 288.030, 288.036, 288.038, 288.040, 288.050, 288.060, 288.110, 288.121, 288.128, 288.270, 288.290, 288.310, 288.330, 288.385, 288.395, 288.397, 1, and 2, to read as follows:

285.300. 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format, shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary,

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

7 not less than twelve days nor more than sixteen days apart. For purposes of this section, the date  
8 the employer hires the employee shall be the earlier of the date the employee signs the W-4 form  
9 or its equivalent, or the first date the employee reports to work, or performs labor or services.  
10 Such forms shall be forwarded by the department of revenue to the division of child support  
11 enforcement on a weekly basis and the information shall be entered into the database, to be  
12 known as the "State Directory of New Hires". The information reported shall be provided to the  
13 National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or  
14 contractors of the division as required or allowed by federal statutes or regulations. **The division**  
15 **of employment security shall cross-check Missouri unemployment compensation recipients**  
16 **against any federal new hire database or any other database containing Missouri or other**  
17 **states' wage information which is maintained by the federal government on a weekly basis.**

18 2. Any employer that has employees who are employed in two or more states and  
19 transmits reports magnetically or electronically may comply with subsection 1 of this section by:

20 (1) Designating one of the states in which the employer has employees as the designated  
21 state that such employer shall transmit the reports; and

22 (2) Notifying the secretary of Health and Human Services of such designation.

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

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

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

7 (3) "Benefit year" means the one-year period beginning with the first day of the first  
8 week with respect to which an insured worker first files an initial claim for determination of  
9 such worker's insured status, and thereafter the one-year period beginning with the first day of  
10 the first week with respect to which the individual, providing the individual is then an insured  
11 worker, next files such an initial claim after the end of the individual's last preceding benefit  
12 year;

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

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

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

20 (7) "Commission" means the labor and industrial relations commission of Missouri;

21 (8) "Common paymaster" means two or more related corporations in which one of the  
22 corporations has been designated to disburse remuneration to concurrently employed individuals  
23 of any of the related corporations;

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

26 (10) "Decision" means a ruling made by an appeals tribunal or the commission after a  
27 hearing;

28 (11) "Deputy" means a representative of the division designated to make investigations  
29 and administrative determinations on claims or matters of employer liability or to perform related  
30 work;

31 (12) "Determination" means any administrative ruling made by the division without a  
32 hearing;

33 (13) "Director" means the administrative head of the division of employment security;

34 (14) "Division" means the division of employment security which administers this  
35 chapter;

36 (15) "Employing unit" means any individual, organization, partnership, corporation,  
37 common paymaster, or other legal entity, including the legal representatives thereof, which has  
38 or, subsequent to June 17, 1937, had in its employ one or more individuals performing services  
39 for it within this state. All individuals performing services within this state for any employing  
40 unit which maintains two or more separate establishments within this state shall be deemed to  
41 be employed by a single employing unit for all the purposes of this chapter. Each individual  
42 engaged to perform or to assist in performing the work of any person in the service of an  
43 employing unit shall be deemed to be engaged by such employing unit for all the purposes of this  
44 chapter, whether such individual was engaged or paid directly by such employing unit or by such  
45 person, provided the employing unit had actual or constructive knowledge of the work;

46 (16) "Employment office" means a free public employment office operated by this or any  
47 other state as a part of a state controlled system of public employment offices including any  
48 location designated by the state as being a part of the one-stop career system;

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

52 (18) "Fund" means the unemployment compensation fund established by this chapter;

53 (19) "Governmental entity" means the state, any political subdivision thereof, any  
54 instrumentality of any one or more of the foregoing which is wholly owned by this state and one  
55 or more other states or political subdivisions and any instrumentality of this state or any political  
56 subdivision thereof and one or more other states or political subdivisions;

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

59 (21) "Insured work" means employment in the service of an employer;

60 (22) As to initial claims filed after December 31, 1990, "insured worker" means a worker  
61 who has been paid wages for insured work in the amount of one thousand dollars or more in at  
62 least one calendar quarter of such worker's base period and total wages in the worker's base  
63 period equal to at least one and one-half times the insured wages in that calendar quarter of the  
64 base period in which the worker's insured wages were the highest, or in the alternative, a worker  
65 who has been paid wages in at least two calendar quarters of such worker's base period and  
66 whose total base period wages are at least one and one-half times the maximum taxable wage  
67 base, taxable to any one employer, in accordance with [subdivision (1)] **subsection 2** of section  
68 288.036. For the purposes of this definition, "wages" shall be considered as wage credits with  
69 respect to any benefit year, only if such benefit year begins subsequent to the date on which the  
70 employing unit by which such wages were paid has become an employer;

71 (23) "Lessor", in a lease, means the party granting the use of equipment, with or without  
72 a driver to another;

73 (24) **"Misconduct", means an act of wanton or willful disregard of the employer's**  
74 **interest, a deliberate violation of the employer's rules, a disregard of standards of behavior**  
75 **which the employer has the right to expect of his or her employee, or negligence in such**  
76 **degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an**  
77 **intentional and substantial disregard of the employer's interest or of the employee's duties**  
78 **and obligations to the employer;**

79 (25) "Referee" means a representative of the division designated to serve on an appeals  
80 tribunal;

81 [(25)] (26) "State" includes, in addition to the states of the United States of America, the  
82 District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

83 [(26)] (27) **"Temporary help firm", means a firm that hires its own employees and**  
84 **assigns them to clients to support or supplement the clients' workforce in work situations**  
85 **such as employee absences, temporary skill shortages, seasonal workloads, and special**  
86 **assignments and projects;**

87 (28) **"Temporary employee", means an employee assigned to work for the clients**  
88 **of a temporary help firm;**

89 (29) (a) An individual shall be deemed "totally unemployed" in any week during which  
90 the individual performs no services and with respect to which no wages are payable to such  
91 individual;

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

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

102 [(27)] (30) "Waiting week" means the first week of unemployment for which a claim is  
103 allowed in a benefit year or if no waiting week has occurred in a benefit year in effect on the  
104 effective date of a shared work plan, the first week of participation in a shared work  
105 unemployment compensation program pursuant to section 288.500.

106 2. The Missouri average annual wage shall be computed as of June thirtieth of each year,  
107 and shall be applicable to the following calendar year. The Missouri average annual wage shall  
108 be calculated by dividing the total wages reported as paid for insured work in the preceding  
109 calendar year by the average of mid-month employment reported by employers for the same  
110 calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri  
111 average annual wage as computed in this subsection by fifty-two.

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

11 (1) [For the purposes of determining the amount of contributions due and contribution  
12 rates, that part of the remuneration for employment paid to an individual by an employer or the  
13 employer's predecessors which is in excess of seven thousand dollars for the calendar years 1988  
14 through 1992, seven thousand five hundred dollars for the calendar year 1993, eight thousand  
15 five hundred dollars for the calendar years 1994, 1995 and 1996, eight thousand dollars for  
16 calendar year 1997, and eight thousand five hundred dollars for the calendar year 1998, and the

17 state taxable wage base as determined in subsection 2 of this section for calendar year 1999, and  
18 each calendar year thereafter, unless that part of the remuneration is subject to a tax pursuant to  
19 a federal law imposing a tax against which credit may be taken for contributions required to be  
20 paid into a state unemployment fund; except that:

21 (a) In addition to the taxable wage, as defined in this subdivision, if on December 31,  
22 1995, or on any December thirty-first thereafter, the balance in the unemployment insurance trust  
23 fund, less any federal advances, is less than one hundred million dollars, then the amount of the  
24 taxable wage then in effect shall be increased by five hundred dollars for all succeeding calendar  
25 years;

26 (b) If on December 31, 1995, or any December thirty-first thereafter, the balance in the  
27 unemployment insurance trust fund, less any federal advances, is two hundred and fifty million  
28 dollars or more, then the amount of the taxable wage then in effect shall be reduced by five  
29 hundred dollars, but not below that part of the remuneration which is subject to a tax pursuant  
30 to a federal law imposing a tax against which credit may be taken for contributions required to  
31 be paid into a state unemployment fund;

32 [(2)] The amount of any payment made (including any amount paid by an employing unit  
33 for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of,  
34 an individual under a plan or system established by an employing unit which makes provision  
35 generally for individuals performing services for it or for a class or classes of such individuals,  
36 on account of:

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

40 (b) Medical and hospitalization expenses in connection with sickness or accident  
41 disability; or

42 (c) Death;

43 [(3)] (2) The amount of any payment on account of sickness or accident disability, or  
44 medical or hospitalization expenses in connection with sickness or accident disability, made by  
45 an employing unit to, or on behalf of, an individual performing services for it after the expiration  
46 of six calendar months following the last calendar month in which the individual performed  
47 services for such employing unit;

48 [(4)] (3) The amount of any payment made by an employing unit to, or on behalf of, an  
49 individual performing services for it or his or her beneficiary:

50 (a) From or to a trust described in 26 U.S.C. 401(a) which is exempt from tax pursuant  
51 to 26 U.S.C. 501(a) at the time of such payment unless such payment is made to an employee

52 of the trust as remuneration for services rendered as such an employee and not as a beneficiary  
53 of the trust; or

54 (b) Under or to an annuity plan which, at the time of such payments, meets the  
55 requirements of section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);

56 [(5)] (4) The amount of any payment made by an employing unit (without deduction  
57 from the remuneration of the individual in employment) of the tax imposed pursuant to section  
58 3101 of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an individual with  
59 respect to remuneration paid to an employee for domestic service in a private home or for  
60 agricultural labor;

61 [(6)] (5) Remuneration paid in any medium other than cash to an individual for services  
62 not in the course of the employing unit's trade or business;

63 [(7)] (6) Remuneration paid in the form of meals provided to an individual in the service  
64 of an employing unit where such remuneration is furnished on the employer's premises and at  
65 the employer's convenience, except that remuneration in the form of meals that is considered  
66 wages and required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26  
67 U.S.C. Sec. 3306 shall be reported as wages as required thereunder;

68 [(8)] (7) For the purpose of determining wages paid for agricultural labor as defined in  
69 paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service as  
70 defined in subsection 13 of section 288.034, only cash wages paid shall be considered;

71 [(9)] (8) Beginning on October 1, 1996, any payment to, or on behalf of, an employee  
72 or the employee's beneficiary under a cafeteria plan, if such payment would not be treated as  
73 wages pursuant to the Federal Unemployment Tax Act.

74 2. The increases or decreases to the state taxable wage base for calendar year [1999]  
75 **2005**, and each calendar year thereafter, shall be determined by the provisions within this  
76 subsection. **On January 1, 2005**, the state taxable wage base for calendar year [1999, and] **2005**  
77 **shall be eleven thousand dollars for the balance of the calendar year. The state taxable**  
78 **wage base for each calendar year thereafter[,] shall be determined by the preceding September**  
79 **thirtieth balance of the unemployment compensation trust fund, less any outstanding federal Title**  
80 **XII advances received pursuant to section 288.330, or if the fund is not utilizing moneys**  
81 **advanced by the federal government, then less the principal, interest, and administrative**  
82 **expenses related to bonds issued under section 288.330, or the principal, interest, and**  
83 **administrative expenses related to financial agreements under subdivision (17) of**  
84 **subsection 2 of section 288.330, or the principal, interest, and administrative expenses**  
85 **related to a combination of bonds and financial agreements.** When the September thirtieth  
86 unemployment compensation trust fund balance, less any outstanding federal Title XII advances  
87 received pursuant to section 288.330, is:

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

90 (2) [Four] **Five** hundred [fifty] million or more, then the state taxable wage base for the  
91 subsequent calendar year shall be decreased by five hundred dollars. In no event, however, shall  
92 the state taxable wage base increase beyond [ten] **eleven** thousand [five hundred] dollars, or  
93 decrease to less than seven thousand dollars.

94

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

288.038. With respect to initial claims filed [during calendar years 1998, 1999, 2000 and  
2 2001] **after the effective date of this section** and each calendar year thereafter, the "maximum  
3 weekly benefit amount" means four percent of the total wages paid to an eligible insured worker  
4 during that quarter of the worker's base period in which the worker's wages were the highest, but  
5 the maximum weekly benefit amount shall not exceed [two hundred five dollars in the calendar  
6 year 1998, two hundred twenty dollars in the calendar year 1999, two hundred thirty-five dollars  
7 in the calendar year 2000, and] two hundred fifty dollars in the calendar [year 2001, and] **years**  
8 **2004 and 2005, two hundred sixty dollars for calendar years 2006 and 2007, and two**  
9 **hundred seventy dollars for calendar year 2008 and** each calendar year thereafter. If such  
10 benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower  
11 full dollar amount.

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

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

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



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

15 (b) The claimant is temporarily unemployed through no fault of his or her own and has  
16 a definite recall date within eight weeks of his or her first day of unemployment; however, upon  
17 application of the employer responsible for the claimant's unemployment, such eight-week period  
18 may be extended at the discretion of the director; **or**

19 (c) **The claimant is participating in a state-approved drug or alcohol treatment**  
20 **program;**

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

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

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

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

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

36

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

40 (4) Prior to the first week of a period of total or partial unemployment for which the  
41 claimant claims benefits he **or she** has been totally or partially unemployed for a waiting period  
42 of one week. No more than one waiting week will be required in any benefit year. [The  
43 one-week waiting period shall become compensable after unemployment during which benefits  
44 are payable for nine consecutive weeks.] No week shall be counted as a week of total or partial  
45 unemployment for the purposes of this subsection unless it occurs within the benefit year which  
46 includes the week with respect to which the claimant claims benefits;

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

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

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

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

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

59 3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of  
60 section 288.034, shall be payable in the same amount, on the same terms and subject to the same  
61 conditions as compensation payable on the basis of other service subject to this law; except that:

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

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

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

82 (d) With respect to services described in paragraphs (a) and (b) of this subdivision,  
83 benefits payable on the basis of services in any such capacity shall be denied as specified in

84 paragraphs (a), (b), and (c) of this subdivision, to any individual who performed such services  
85 at an educational institution while in the employ of an educational service agency, and for this  
86 purpose the term "educational service agency" means a governmental agency or governmental  
87 entity which is established and operated exclusively for the purpose of providing such services  
88 to one or more educational institutions.

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

97 4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work  
98 benefits for any week for which he or she is receiving or has received remuneration exceeding  
99 his or her weekly benefit amount or shared work benefit amount in the form of:

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

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

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

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

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

125           6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for  
126 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage  
127 of work which exists because of a labor dispute in the factory, establishment or other premises  
128 in which such claimant is or was last employed. In the event the claimant secures other  
129 employment from which he or she is separated during the existence of the labor dispute, the  
130 claimant must have obtained bona fide employment as a permanent employee for at least the  
131 major part of each of two weeks in such subsequent employment to terminate his or her  
132 ineligibility. If, in any case, separate branches of work which are commonly conducted as  
133 separate businesses at separate premises are conducted in separate departments of the same  
134 premises, each such department shall for the purposes of this subsection be deemed to be a  
135 separate factory, establishment or other premises. This subsection shall not apply if it is shown  
136 to the satisfaction of the deputy that:

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

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

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

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

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

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

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

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

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

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

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

16 (c) If the deputy finds the individual quit work, which would have been determined not  
17 suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within  
18 twenty-eight calendar days of the first day worked;

19 (d) As to initial claims filed after December 31, 1988, if the claimant presents evidence  
20 supported by competent medical proof that she was forced to leave her work because of  
21 pregnancy, notified her employer of such necessity as soon as practical under the circumstances,  
22 and returned to that employer and offered her services to that employer as soon as she was  
23 physically able to return to work, as certified by a licensed and practicing physician, but in no  
24 event later than ninety days after the termination of the pregnancy. An employee shall have been

25 employed for at least one year with the same employer before she may be provided benefits  
26 pursuant to the provisions of this paragraph; or

27 **(e) If the deputy finds the claimant quit such work due to such claimant reasonably**  
28 **fearing for his or her physical health and safety by reason of domestic violence. The**  
29 **claimant shall be required to demonstrate continued employment places the claimant in**  
30 **immediate danger of further violence and that he or she:**

31 **a. does not reside with the alleged abuser; and**

32 **b. has filed for and received an ex parte, temporary or permanent order of**  
33 **protection against the alleged abuser; or**

34 **c. has filed with the appropriate police jurisdiction a report of the alleged violence.**

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

38 (3) That the claimant failed without good cause either to apply for available suitable  
39 work when so directed by the deputy, or to accept suitable work when offered the claimant, either  
40 through the division or directly by an employer by whom the individual was formerly employed,  
41 or to return to the individual's customary self-employment, if any, when so directed by the  
42 deputy. **An offer of work shall be conclusively established if an employer notifies the**  
43 **claimant in writing of such offer by sending an acknowledgment via any form of certified**  
44 **mail issued by the United State Postal Service stating such offer to the claimant at his or**  
45 **her last known address. Nothing in this subdivision shall be construed to limit the means**  
46 **by which the deputy may establish that the claimant has been sufficiently notified of**  
47 **available work.**

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

61 prevailing for similar work in such community, or any work which the individual is capable of  
62 performing at the wages prevailing for such work in the locality to which the individual has  
63 moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable  
64 for the individual;

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

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

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

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

73 2. [Notwithstanding the other provisions of this law,] If a deputy finds that a claimant  
74 has been discharged for misconduct connected with the claimant's work, such claimant[,  
75 depending upon the seriousness of the misconduct as determined by the deputy according to the  
76 circumstances in each case,] shall be disqualified for waiting week credit or benefits [for not less  
77 than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise  
78 eligible], **and no benefits shall be paid nor shall the cost of any benefits be charged against  
79 any employer for any period of employment within the base period until the claimant has  
80 earned wages for work insured under the unemployment laws of this state or any other  
81 state as prescribed in this section.** In addition to the disqualification for benefits pursuant to  
82 this provision the division may in the more aggravated cases of misconduct, cancel all or any part  
83 of the individual's wage credits, which were established through the individual's employment by  
84 the employer who discharged such individual, according to the seriousness of the misconduct.  
85 A disqualification provided for pursuant to this subsection shall not apply to any week which  
86 occurs after the claimant has earned wages for work insured pursuant to the unemployment  
87 compensation laws of any state in an amount equal to eight times the claimant's weekly benefit  
88 amount. **Should a claimant be disqualified on a second or subsequent occasion within the  
89 base period or subsequent to the base period the claimant shall be required to earn wages  
90 in an amount equal to or in excess of eight times the claimant's weekly benefit amount for  
91 each disqualification, such additionally required wages shall run consecutively. For the  
92 purpose of this chapter, a professionally administered and documented positive chemical  
93 test result for a controlled substance as defined under section 195.010, RSMo, or for blood  
94 alcohol content of eight-hundredths of one percent or more by weight of alcohol in the  
95 claimant's blood shall be deemed misconduct connected with work. The employer shall  
96 have notified the employee of the employer's controlled substance and alcohol workplace**

97 **policy by conspicuously posting the policy in the workplace, by including the policy in an**  
98 **employee handbook, or by a statement of such policy in a collective bargaining agreement**  
99 **governing employment of the employee. The policy shall state that a positive test result**  
100 **shall be deemed misconduct and may result in suspension or termination of employment.**  
101 **Use of a controlled substance as defined under section 195.010, RSMo, under, and in**  
102 **conformity with the lawful order of a healthcare practitioner shall not be deemed to be**  
103 **misconduct connected with work for the purposes of this section.**

104 3. [A pattern of] Absenteeism or tardiness may constitute misconduct regardless of  
105 whether the last incident alone [which results] **resulting** in the discharge constitutes misconduct.

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

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

3 2. Each eligible insured worker who is totally unemployed in any week shall be paid for  
4 such week a sum equal to his weekly benefit amount.

5 3. Each eligible insured worker who is partially unemployed in any week shall be paid  
6 for such week a partial benefit. Such partial benefit shall be an amount equal to the difference  
7 between his weekly benefit amount and that part of his wages for such week in excess of  
8 [twenty] **forty** dollars, and, if such partial benefit amount is not a multiple of one dollar, such  
9 amount shall be reduced to the nearest lower full dollar amount. [Termination pay, severance  
10 pay or] **Provided further, however, that an individual shall be considered to be unemployed**  
11 **as to receipt of severance pay for any week the individual is registered at as well as**  
12 **attending any state institution of higher education or public secondary school. In addition,**  
13 **an individual shall be considered to be unemployed as to receipt of severance pay for any**  
14 **week the individual is registered at as well as attending a labor and industrial relations**  
15 **commission qualified vocational, educational, or training program that meets commission**  
16 **established minimum standards. The commission shall annually update and review the list**  
17 **of qualified programs.** Pay received by an eligible insured worker who is a member of the  
18 organized militia for training or duty authorized by section 502(a)(1) of Title 32, United States



19 Code, [or who is an elected official] shall not be considered wages for the purpose of this  
20 subsection.

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

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

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

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

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

288.110. Any individual, type of organization or employing unit which has acquired  
2 substantially all of the business of an employer, excepting in any such case any assets retained  
3 by such employer incident to the liquidation of his obligations, and in respect to which the  
4 division finds that immediately after such change such business of the predecessor employer is  
5 continued without interruption solely by the successor, shall stand in the position of such  
6 predecessor employer in all respects, including the predecessor's separate account, actual  
7 contribution and benefit experience, annual payrolls, and liability for current or delinquent  
8 contributions, interest and penalties. If two or more individuals, organizations, or employing  
9 units acquired at approximately the same time substantially all of the business of an employer  
10 (excepting in any such case any assets retained by such employer incident to the liquidation of  
11 his obligations) and in respect to which the division finds that immediately after such change all  
12 portions of such business of the predecessor are continued without interruption solely by such  
13 successors, each such individual, organization, or employing unit shall stand in the position of  
14 such predecessor with respect to the proportionate share of the predecessor's separate account,  
15 actual contribution and benefit experience and annual payroll as determined by the portion of the  
16 predecessor's taxable payroll applicable to the portion of the business acquired, and each such  
17 individual, organization or employing unit shall be liable for current or delinquent contributions,  
18 interest and penalties of the predecessor in the same relative proportion. Further, any successor  
19 under this section which was not an employer at the time the acquisition occurred, shall pay  
20 contributions for the balance of the current rate year at the same contribution rate as the  
21 contribution rate of the predecessor whether such rate is more or less than two and seven-tenths  
22 percent, provided there was only one predecessor or there were only predecessors with identical  
23 rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date  
24 of acquisition applicable to the successor for the remainder of the rate year, which rate shall be  
25 based on the combined experience of all predecessor employers. In the event that any successor  
26 was, prior to an acquisition, an employer, and there is a difference in the contribution rate  
27 established for such calendar year applicable to any acquired or acquiring employer, the division  
28 shall make a recalculation [as of the date of acquisition] of the contribution rate applicable to any  
29 successor employer based upon the combined experience of all predecessor and successor  
30 employers[, which] **as of the date of the acquisition, unless the date of the acquisition is**  
31 **other than the first day of the calendar quarter. If the date of any such acquisition is other**  
32 **than the first day of the calendar quarter the division shall make the recalculation of the**  
33 **rate on the first day of the next calendar quarter after the acquisition. When the date of**  
34 **the acquisition is other than the first day of a calendar quarter the successor employer shall**  
35 **use its rate for the calendar quarter in which the acquisition was made. The revised**  
36 contribution rate shall apply to employment after the [date of any such acquisition] **rate**

37 **recalculation.** For this purpose a calculation date different from July first may be established.  
 38 When the division has determined that a successor or successors stand in the position of a  
 39 predecessor employer, the predecessor's liability shall be terminated as of the date of the  
 40 acquisition.

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

|           |                                      | Balance in Trust Fund |                                      |             |
|-----------|--------------------------------------|-----------------------|--------------------------------------|-------------|
|           |                                      |                       |                                      | Percentage  |
| Less Than |                                      | Equals or Exceeds     |                                      | of Increase |
| 10        | [\$400,000,000] <b>\$450,000,000</b> | 11                    | [\$350,000,000] <b>\$400,000,000</b> | 10%         |
| 11        | [\$350,000,000] <b>\$400,000,000</b> | 12                    | [\$300,000,000] <b>\$350,000,000</b> | 20%         |
| 12        | [\$300,000,000] <b>\$350,000,000</b> |                       |                                      | 30%         |

13  
 14 [Notwithstanding the table in this section, each employer's contribution rate calculated for the  
 15 four calendar quarters of calendar year 1994 shall be increased by forty percent, instead of thirty  
 16 percent, as previously indicated in the table in this section. After the forty percent increase, each  
 17 employer's contribution rate for the four calendar quarters of calendar year 1994 shall be  
 18 increased by adding three-tenths of one percent.] **Beginning on January 1, 2005, and**  
 19 **continuing until such time as the trust fund balance including any outstanding**  
 20 **indebtedness, is greater than or equal to zero the contribution rate of any employer who**  
 21 **is paying the maximum contribution rate of six percent shall be increased by forty percent.**

22 **2. Effective January 1, 2005, an employer's total contribution rate shall equal the**  
 23 **employer's base rate plus a temporary solvency charge of one-tenth of one percent added**  
 24 **to the base rate plus the increase authorized under subsection 1 of this section. The**  
 25 **temporary solvency charge shall expire upon the last day of the fourth calender quarter**  
 26 **following the effective date of this section.**

288.128. **1.** In addition to all other contributions due under this chapter, if the fund is  
 2 utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A.,  
 3 section 1321 pursuant to section 288.330[,] **or if the fund is not utilizing moneys advanced**  
 4 **by the federal government, then from the proceeds of bonds issued under section 288.330,**  
 5 **or from the moneys advanced under financial agreements under subdivision (17) of**  
 6 **subsection 2 of section 288.330, or a combination of bond proceeds and moneys advanced**

7 **under financial agreements** each employer shall be assessed an amount solely for the payment  
8 of interest due on such federal advancements, **or if the fund is not utilizing moneys advanced**  
9 **by the federal government, or in the case of issuance of bonds for the payment of the**  
10 **principal, interest, and administrative expenses related to such bonds, or in the case of**  
11 **financial agreements for the payment of principal, interest, and administrative expenses**  
12 **related to such financial agreements, or in the case of a combination of bonds and financial**  
13 **agreements for the payment of principal, interest, and administrative expenses for both.**  
14 The rate shall be determined by dividing the interest due **on federal advancements or if the**  
15 **fund is not utilizing moneys advanced by the federal government, then the principal,**  
16 **interest, and administrative expenses related to bonds, or the principal, interest, and**  
17 **administrative expenses related to financial agreements under subdivision (17) of**  
18 **subsection 2 of section 288.330, or the principal, interest, and administrative expenses**  
19 **related to a combination of bonds and financial agreements** by ninety-five percent of the total  
20 taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's  
21 proportionate share shall be the product obtained by multiplying such employer's total taxable  
22 wages for the preceding calendar year by the rate specified in this section. Each employer shall  
23 be notified of the amount due under this section by June thirtieth of each year and such amount  
24 shall be considered delinquent thirty days thereafter. The moneys collected from each employer  
25 for the payment of interest due on federal advances **or if the fund is not utilizing moneys**  
26 **advanced by the federal government, then the payment of principal, interest, and**  
27 **administrative expenses related to bonds, or the payment of the principal, interest, and**  
28 **administrative expenses related to financial agreements under subdivision (17) of**  
29 **subsection 2 of section 288.330, or the payment of the principal, interest, and**  
30 **administrative expenses related to a combination of bonds and financial agreements** shall  
31 be deposited in the special employment security fund.

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

288.270. The provisions of the Wagner-Peyser Act (29 U.S.C.A. Sec. 49 et seq.), as  
2 amended, are hereby accepted by this state and the division of employment security is hereby

3 designated and constituted the agency of this state for the purposes of said act. The division shall  
4 establish and maintain free public employment offices in such number and in such places as may  
5 be necessary for the proper administration of this chapter and for the purposes of performing  
6 such functions as are within the purview of the Wagner-Peyser Act. **To the extent allowed by  
7 law, such departments, divisions, and agencies may contract with private entities for the  
8 purpose of providing employment and reemployment services. Any contract let for the  
9 performance of services under this section shall include provisions which specify that only  
10 citizens of the United States and person authorized to work in the United States pursuant  
11 to federal law shall be employed in the performance of services under the contract or any  
12 subcontract awarded under the contract.**

288.290. 1. There is hereby established as a special fund, separate and apart from all  
2 public moneys or funds of this state, an "Unemployment Compensation Fund", which shall be  
3 administered by the division exclusively for the purposes of this law. This fund shall consist of:  
4 (1) All contributions and payments in lieu of contributions collected under this law;  
5 (2) Interest earned upon any moneys in the fund;  
6 (3) Any property or securities acquired through the use of moneys belonging to the fund;  
7 (4) All earnings of such property or securities;  
8 (5) All voluntary contributions permitted under the law; and  
9 (6) All funds set aside or appropriated by the Congress of the United States or any  
10 federal agency, to be deposited to the fund. All moneys in the funds shall be mingled and  
11 undivided, except that all money credited to this state's account in the Unemployment Trust Fund  
12 pursuant to Section 903 of the Social Security Act, as amended, and which has been appropriated  
13 for expenses of administration, shall be used only for the purposes set out in subsection 5 of this  
14 section and shall not be included in the cash balance in the unemployment compensation fund  
15 for the purposes of sections 288.100 and 288.113 to 288.126.

16 2. The director shall designate a treasurer and custodian of the fund and he **or she** shall  
17 administer the fund and shall issue his **or her** warrants upon it in accordance with such  
18 regulations as the director shall prescribe. He **or she** shall maintain within the fund three  
19 separate accounts:

- 20 (1) A clearing account;  
21 (2) An unemployment trust fund account; and  
22 (3) A benefit account.

23

24 **To ensure that employment trust fund moneys are utilized only for the purpose authorized**  
25 **no other fund shall be established with increased employer taxes that are offset by a**

26 **reduction of unemployment contributions, except for the special employment security fund**  
27 **created in section 288.310.**

28           3. All moneys payable to the fund, upon their receipt by the division, shall immediately  
29 be deposited in the clearing account. Refunds of contributions or payments made necessary  
30 under the provisions of sections 288.140 and 288.340 may be paid from the clearing account or  
31 the benefit account. After clearance, all moneys in the clearing account shall be immediately  
32 deposited with the Secretary of the Treasury of the United States of America to the credit of the  
33 account of this state in the Unemployment Trust Fund, established and maintained pursuant to  
34 Section 904 of the Social Security Act, as amended, any provisions of law in this state relating  
35 to the deposit, administration, release, or disbursement of state moneys in the possession or  
36 custody of the state treasurer to the contrary notwithstanding. The benefit account shall consist  
37 of all moneys requisitioned from the Missouri account in the federal Unemployment Trust Fund.  
38 Except as otherwise provided, moneys in the clearing and benefit accounts may be deposited in  
39 any bank or public depository in which general funds of the state may be deposited, but no public  
40 deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and  
41 benefit accounts shall not be commingled with other state funds but shall be maintained in  
42 separate accounts on the books of the depository bank. All funds required by this law to be  
43 deposited in any state depository shall be secured by such depository to the same extent and in  
44 the same manner as is or may hereafter be required by section 30.270, RSMo, and all the  
45 amendments thereto; provided, that the division shall do those acts directed to be done by the  
46 governor, attorney general and state treasurer, or any of them, under section 30.270, RSMo,  
47 which are not inconsistent with the other provisions of this law. Collateral pledged for this  
48 purpose shall be kept separate and distinct from any collateral pledged to secure other funds of  
49 the state, or, if combined, shall be first used to satisfy and make whole the accounts herein  
50 established. The treasurer shall give a separate bond conditioned upon the faithful performance  
51 of his duties as custodian of the fund in an amount not to exceed twenty-five thousand dollars  
52 and in the form prescribed by law or approved by the attorney general. Premiums for such bonds  
53 shall be paid from the administration fund. All sums recovered for losses sustained by the fund  
54 shall be deposited therein.

55           4. Moneys shall be requisitioned from the Missouri account in the federal  
56 Unemployment Trust Fund solely for the payment of benefits or for refunds of contributions or  
57 payments in lieu of contributions in accordance with regulations prescribed by the director,  
58 except that money credited to this state's account pursuant to Section 903 of the Social Security  
59 Act, as amended, shall be used exclusively as provided in subsection 5 of this section. The  
60 director shall from time to time requisition from the federal Unemployment Trust Fund such  
61 amounts, not exceeding the amounts standing to the Missouri account therein, as he deems

62 necessary for the payment of benefits and refunds for a reasonable future period. Upon its  
63 receipt the treasurer shall deposit such money in the benefit account and shall issue his warrants  
64 for the payment of benefits solely from such benefit account. Expenditures of such moneys in  
65 the benefit account and refunds from the clearing account shall not be subject to any provisions  
66 of law requiring specific appropriations or other formal release by state officers of moneys  
67 belonging to this state in their custody. All warrants issued by the treasurer for the payment of  
68 benefits and refunds shall bear the signature of the treasurer and the countersignature of the  
69 director or other duly authorized division representative. Any balance of moneys requisitioned  
70 from the federal Unemployment Trust Fund which remains unclaimed or unpaid in the benefit  
71 account after the expiration of the period for which such sums were requisitioned shall either be  
72 deducted from estimates for, and may be utilized for the payment of, benefits during succeeding  
73 periods, or, in the discretion of the director, shall be redeposited with the Secretary of the  
74 Treasury of the United States of America to the credit of the Missouri account in the federal  
75 Unemployment Trust Fund as provided in subsection 3 of this section.

76 5. (1) Money credited to the account of this state in the Unemployment Trust Fund by  
77 the Secretary of the Treasury of the United States of America pursuant to Section 903 of the  
78 Social Security Act, as amended, may be requisitioned and used for the payment of expenses  
79 incurred for the administration of this law pursuant to a specific appropriation by the legislature,  
80 provided that the expenses are incurred and the money is requisitioned as needed after the  
81 enactment of an appropriation law which:

82 (a) Specifies the purpose for which such money is appropriated and the amounts  
83 appropriated therefor;

84 (b) Limits the period within which such money may be obligated to a period ending not  
85 more than two years after the date of the enactment of the appropriation law; and

86 (c) Limits the amount which may be obligated during a twelve-month period beginning  
87 on July first and ending on the next June thirtieth to an amount which does not exceed the  
88 amount by which the aggregate of the amount transferred to the account of this state in the  
89 Unemployment Trust Fund pursuant to subsections (a) and (b) of Section 903 of the Social  
90 Security Act, as amended, exceeds the aggregate of the amounts used by this state pursuant to  
91 this subsection and charged against the amounts transferred to the account of this state in the  
92 Unemployment Trust Fund.

93 (2) The use of the money referred to in subdivision (1) of this subsection shall be  
94 accounted for in accordance with standards established by the Secretary of Labor.

95 (3) For purposes of subdivision (1) of this subsection, amounts used by this state for  
96 administration shall be chargeable against transferred amounts at the exact time the obligation  
97 is entered into.

98           (4) Money credited to the account of this state pursuant to Section 903 of the Social  
99 Security Act, as amended, may not be withdrawn or used except for the payment of benefits and  
100 for the payment of expenses for the administration of this law and of public employment offices  
101 pursuant to this subsection.

102           (5) Money appropriated as provided under subdivision (1) of this subsection for the  
103 payment of expenses of administration shall be requisitioned as needed for the payment of  
104 obligations incurred under such appropriation and, upon requisition, shall be deposited in the  
105 unemployment compensation administration fund from which such payments shall be made.  
106 Money so deposited shall, until expended, remain a part of the unemployment compensation  
107 fund and, if it will not be expended, shall be returned promptly to the account of this state in the  
108 Unemployment Trust Fund.

109           (6) Money credited to the account of the state in the federal Unemployment Trust Fund  
110 by the Secretary of the Treasury of the United States of America pursuant to Title 42, Section  
111 903 of the Social Security Act with respect to the federal fiscal years 1999, 2000 and 2001, shall  
112 be used solely for the administration of the unemployment compensation program.

113           6. The provisions of subsections 1, 2, 3, 4, and 5 of this section, to the extent that they  
114 relate to the federal Unemployment Trust Fund, shall be operative only so long as such federal  
115 Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the  
116 United States of America continues to maintain a separate book account of all funds deposited  
117 therein by contributions from employers of this state for benefit purposes, and by money credited  
118 pursuant to Section 903 of the Social Security Act, as amended, together with a proportionate  
119 share of the earnings apportioned to the Missouri account of such federal Unemployment Trust  
120 Fund, from which no other state is permitted to make or authorize withdrawals. If and when  
121 such Unemployment Trust Fund ceases to exist, or such separate book account is no longer  
122 maintained, all moneys, properties, or securities therein belonging to the unemployment  
123 compensation fund of this state shall be transferred to the treasurer of the unemployment  
124 compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys,  
125 properties or securities in a manner approved by the director in accordance with the provisions  
126 of this law; provided, that such moneys shall be invested in the following readily marketable  
127 classes of securities: bonds or other interest-bearing obligations of the United States of America,  
128 or securities on which the payment of principal and interest are guaranteed by the United States  
129 of America, and bonds or other interest-bearing obligations of the state of Missouri; and  
130 provided, further, that such investments shall at all times be so made that all the assets of the  
131 fund shall always be readily convertible into cash when needed for the payment of benefits. The  
132 treasurer shall dispose of securities or other properties belonging to the unemployment  
133 compensation fund only under the direction of the director.



134           7. Notwithstanding any other provision of this law, any interest or penalties found to  
135 have been erroneously collected and which is ordered to be refunded shall, if paid into the  
136 unemployment compensation fund, be refunded out of the unemployment compensation fund  
137 and, if paid into the special employment security fund, shall be refunded out of the special  
138 employment security fund; except that, in the event any interest and penalties paid into the  
139 unemployment compensation fund shall be transferred to the special employment security fund,  
140 the refund of any such interest and penalties shall be made from the special employment security  
141 fund.

288.310. 1. There is hereby created in the state treasury a special fund to be known as  
2 the "Special Employment Security Fund". All interest and penalties collected under the  
3 provisions of this law, including moneys collected pursuant to section 288.128 for the payment  
4 of interest due on federal advances received pursuant to section 288.330, **or if the fund is not**  
5 **utilizing moneys advanced by the federal government, then the payment of principal,**  
6 **interest, and administrative expenses related to bonds issued under section 288.330, or the**  
7 **payment of the principal, interest, and administrative expenses related to financial**  
8 **agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the**  
9 **principal, interest, and administrative expenses related to a combination of bonds and**  
10 **financial agreements** shall be paid into this fund. The moneys collected pursuant to section  
11 288.128 shall be used [exclusively] for the payment of interest due on federal advances received  
12 pursuant to section 288.330, **or if the fund is not utilizing moneys advanced by the federal**  
13 **government, then the payment of principal, interest, and administrative expenses related**  
14 **to bonds issued under that section, or the payment of principal, interest, and**  
15 **administrative expenses related to financial agreements under subdivision (17) of**  
16 **subsection 2 of section 288.330, or the payment of the principal, interest, and**  
17 **administrative expenses related to a combination of bonds and financial agreements.** Such  
18 moneys, except for moneys collected pursuant to section 288.128, shall not be expended or  
19 available for expenditure in any manner which would permit their substitution for, or a  
20 corresponding reduction in, federal funds which would in the absence of such money be available  
21 to finance expenditures for the administration of the employment security law, but nothing in this  
22 section shall prevent such moneys, except for moneys collected pursuant to section 288.128,  
23 from being used as a revolving fund, to cover expenditures, necessary and proper under the law,  
24 for which federal funds have been duly requested but not yet received, subject to the charging  
25 of such expenditures against such funds when received. Subject to the approval of the director  
26 of the department of labor and industrial relations, the moneys in this fund, except for moneys  
27 collected pursuant to section 288.128, shall be used by the department of labor and industrial  
28 relations for the payment of costs of administration which are found not to have been properly

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

59         2. The director of the department of labor and industrial relations, subject to the approval  
60 of the board of public buildings, is authorized and empowered to use all or any part of the funds  
61 in the special employment security fund, except for moneys collected pursuant to section  
62 288.128, for the purpose of acquiring suitable office space for the division by way of purchase,  
63 lease, contract or in any other manner, including the right to use such funds or any part thereof  
64 to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist

65 in financing the construction of any building erected by the state of Missouri or any of its  
66 agencies wherein available space will be provided for the division under lease or contract  
67 between the department of labor and industrial relations and the state of Missouri or such other  
68 agency. The director of the department of labor and industrial relations may transfer from the  
69 unemployment compensation administration fund to the special employment security fund  
70 amounts not exceeding funds specifically available to the department of labor and industrial  
71 relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings  
72 acquired for its use until such time as the full amount of the purchase price of such land and  
73 buildings and such cost of repair and maintenance thereof as was expended from the special  
74 employment security fund has been returned to such fund.

75 3. The director of the department of labor and industrial relations may also transfer from  
76 the unemployment compensation administration fund to the special employment security fund  
77 amounts not exceeding funds specifically available to the department of labor and industrial  
78 relations for that purpose, equivalent to the fair reasonable rental value of space used by the  
79 department of labor and industrial relations in any building erected by the state of Missouri or  
80 any of its agencies until such time as the department of labor and industrial relations'  
81 proportionate amount of the purchase price of such building and the department of labor and  
82 industrial relations' proportionate amount of such costs of repair and maintenance thereof as was  
83 expended from the special employment security fund has been returned to such fund.

288.330. 1. Benefits shall be deemed to be due and payable only to the extent that  
2 moneys are available to the credit of the unemployment compensation fund and neither the state  
3 nor the division shall be liable for any amount in excess of such sums. [Neither the state of  
4 Missouri, nor any person or agency acting for it, may under any circumstance, by issuing bonds  
5 or otherwise borrow money from any source whatsoever to pay benefits hereunder, except as  
6 provided in 42 U.S.C.A. Section 1321.] The governor is authorized to apply for an advance to  
7 the state unemployment fund and to accept the responsibility for the repayment of such advance  
8 [in accordance with the conditions specified in Title XII of the Social Security Act, as amended,]  
9 in order to secure to this state and its citizens the advantages available under the provisions of  
10 [such title] **federal law. Effective January 1, 2006, in the event the fund balance including**  
11 **any outstanding loans or indebtedness is less than or equal to zero and the governor applies**  
12 **for an advance as provided in 42 U.S.C. Section 1321 or the state is required to incur other**  
13 **indebtedness as authorized in this chapter in order to maintain funding for the payment**  
14 **of benefits as authorized by this chapter, the state of Missouri shall be obligated to pay the**  
15 **interest incurred as a result of such advance or indebtedness.**

16 2. (1) **The purpose of this subsection is to provide a method of financing the**  
17 **replenishment of the state's unemployment compensation fund as an alternative to**

18 borrowing or obtaining advances from the federal unemployment trust fund or for  
19 refinancing those loans or advances, and to provide a method through which the state may  
20 continue its unemployment compensation program at the least possible cost to the state and  
21 its employers.

22 (2) For the purposes of this subsection, "bond" means any type of obligation issued  
23 under this section, including any bond, note, tax anticipation note or similar instrument.

24 (3) There is hereby created for the purposes of implementing the provisions of this  
25 subsection a body corporate and politic to be known as the "Missouri Commission on  
26 Employment Security Financing". The powers of the commission shall be vested in seven  
27 commissioners who shall be residents of this state and be appointed by the governor with  
28 the advice and consent of the senate except that the director of the division of employment  
29 security shall serve as a nonvoting ex officio member of the commission. The commission  
30 shall have all powers necessary to effectuate its purposes including without limitation the  
31 power to provide a seal, keep records of its proceedings, provide for professional services,  
32 and elect a chair from its members. Not more than four of the commissioners shall be of  
33 the same political party.

34 (a) The commissioners shall serve five-year terms with each term beginning July  
35 first and ending on June thirtieth, except that of the commissioners first appointed one  
36 shall be appointed for a term of two years, two shall be appointed for a term of three years,  
37 two shall be appointed for a term of four years, and two shall be appointed for a term of  
38 five years. Each commissioner appointed thereafter shall be appointed for a term ending  
39 five years from the date of expiration of the term for which his or her predecessor was  
40 appointed, except that a person appointed to fill a vacancy prior to the expiration of such  
41 a term shall be appointed for the remainder of the term. No commissioner appointed  
42 under this subsection by the governor shall serve more than two consecutive full terms.  
43 Each commissioner shall hold office for the term of his or her appointment and until his  
44 or her successor is appointed and qualified.

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

46 a. No officer or employee of this state shall be deemed to have forfeited or shall  
47 forfeit his or her office or employment by reason of his or her acceptance of an  
48 appointment as a commissioner to the commission or for his or her service to the  
49 commission;

50 b. It shall not constitute a conflict of interest for a director, officer, or employee of  
51 any financial institution, investment banking firm, brokerage firm, commercial bank or  
52 trust company, architectural firm, insurance company, or any other firm, person, or  
53 corporation, to serve as a commissioner of the commission, provided such trustee, director,

54 officer, or employee shall abstain from deliberation, action, and vote by the commission in  
55 each instance where the business affiliation or public office association of any such trustee,  
56 director, officer, or employee is involved.

57 (c) Before entering into his or her duties each commissioner shall execute a surety  
58 bond in the sum of fifty thousand dollars, or in lieu thereof the chair of the commission  
59 may execute a blanket bond covering all members of the commission with each surety bond  
60 to be conditioned upon the faithful performance of the duties of the office or offices  
61 covered and to be executed by a surety company authorized to transact business in this  
62 state as a surety and to be approved by the attorney general and filed in the office of the  
63 secretary of state. The cost of each such bond shall be paid by the commission.

64 (d) Commissioners shall receive no compensation for the performance of their  
65 duties under this subsection, but each commissioner shall be reimbursed from the funds  
66 of the commission for his or her actual and necessary expenses incurred in carrying out his  
67 or her official duties under this subsection.

68 (e) In the event that any of the commissioners or officers of the commission whose  
69 signatures or facsimile signatures appear on any bonds shall cease to be commissioners or  
70 officers before the delivery of such bonds, their signatures or facsimile signatures shall be  
71 valid and sufficient for all purposes as if such commissioners or officers had remained in  
72 office until delivery of such bonds.

73 (f) The commissioners executing the bonds of the commission shall not be subject  
74 to any personal liability or accountability by reason of the issuance of the bonds.

75 (g) The commission shall following the close of each fiscal year submit an annual  
76 report of its activities for the preceding year to the governor and the general assembly.  
77 Each report shall set forth a complete operating and financial statement for the  
78 commission during the fiscal year it covers. At least once in each year an independent  
79 certified public accountant shall audit the records and accounts of the commission.

80 (4) The commission is authorized to issue, sell, and deliver bonds which shall  
81 mature no later than ten years after issuance in the name of the commission in an amount  
82 determined by the commission not to exceed a total of four hundred fifty million dollars  
83 of indebtedness that results in reducing or avoiding the need to borrow or obtain an  
84 advance under 42 U.S.C., Section 1321, or any similar federal legislation, or in an amount  
85 necessary to refinance any borrowing or advance previously made by the state for those  
86 purposes. The commission shall make an affirmative finding that the issuance of bonds for  
87 the purposes established in this section results in a savings to the state and its employers.

88 (5) The commission shall provide for the payment of the principal of the bonds, any  
89 redemption premiums, the interest on the bonds, and the costs attributable to the bonds

90 being issued or outstanding as provided in this subsection and in section 288.310. Unless  
91 the commission directs otherwise, the bonds shall be repaid in the same time frame and in  
92 the same amounts as would be required for loans issued pursuant to 42 U.S.C. Section  
93 1321; however, in no case shall bond indebtedness continue beyond five consecutive years.

94 (6) The commission may irrevocably pledge money received from the contributions  
95 received under section 288.128 as revenue for the payment of bonds and deposited in an  
96 account created for such purpose in the special employment security fund or other money  
97 legally available to it.

98 (7) Bonds issued under this section shall not constitute debts of this state or of any  
99 agency, political corporation, or political subdivision of this state and are not a pledge of  
100 the faith and credit of this state or of any of those governmental entities. The bonds are  
101 payable only from revenue provided for under this chapter. The bonds shall contain a  
102 statement to the effect that:

103 (a) Neither the state nor any agency, political corporation, or political subdivision  
104 of the state shall be obligated to pay the principal or interest on the bonds except as  
105 provided by this section; and

106 (b) Neither the full faith and credit nor the taxing power of the state nor any  
107 agency, political corporation, or political subdivision of the state is pledged to the payment  
108 of the principal, premium, if any, or interest on the bonds except as provided by this  
109 section.

110 (8) The owner of any bonds issued under this section shall at the time of purchase  
111 agree to waive any right of recovery and forever hold harmless the state and any agency,  
112 political corporation, or political subdivision thereof. The bond owner shall agree the sole  
113 source of revenue for repayment of such bonds shall be those revenues derived from  
114 contributions received under section 288.128.

115 (9) The state pledges and agrees with the owners of any bonds issued under this  
116 section that the state will not limit or alter the rights vested in the commission to fulfill the  
117 terms of any agreements made with the owners or in any way impair the rights and  
118 remedies of the owners until the bonds are fully discharged except as provided by this  
119 section.

120 (10) The commission may provide for the flow of funds and the establishment and  
121 maintenance of separate accounts within the special employment security fund, including  
122 the interest and sinking account, the reserve account, and other necessary accounts, and  
123 may make additional covenants with respect to the bonds in the documents authorizing the  
124 issuance of bonds including refunding bonds. The resolutions authorizing the issuance of  
125 bonds may also prohibit the further issuance of bonds or other obligations payable from

126 **appropriated moneys or may reserve the right to issue additional bonds to be payable from**  
127 **appropriated moneys on a parity with or subordinate to the lien and pledge in support of**  
128 **the bonds being issued and may contain other provisions and covenants as determined by**  
129 **the commission.**

130 **(11) The commission may issue bonds to refund all or any part of the outstanding**  
131 **bonds issued under this section including matured but unpaid interest.**

132 **(12) The bonds issued by the commission, any transaction relating to the bonds, and**  
133 **profits made from the sale of the bonds are free from taxation by the state or by any**  
134 **municipality, court, special district, or other political subdivision of the state.**

135 **(13) As determined necessary by the commission the proceeds of the bonds less the**  
136 **cost of issuance shall be placed in the state's unemployment compensation fund and may**  
137 **be used for the purposes for which that fund may otherwise be used. If those net proceeds**  
138 **are not placed immediately in the unemployment compensation fund they shall be held in**  
139 **the special employment security fund in an account designated for that purpose until they**  
140 **are transferred to the unemployment compensation fund.**

141 **(14) The commission may enter into any contract or agreement deemed necessary**  
142 **or desirable to effectuate cost effective financing hereunder. Such agreements may include**  
143 **credit enhancement, credit support, or interest rate agreements. Any fees or costs**  
144 **associated with such agreements shall be deemed administrative expenses for the purposes**  
145 **of calculating assessments relating to payment of the principal, interest, and administrative**  
146 **expenses related to bonds pursuant to the provisions of section 288.128.**

147 **(15) To the extent this section conflicts with other laws the provisions of this section**  
148 **prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298,**  
149 **RSMo.**

150 **(16) If the United States Secretary of Labor holds that a provision of this subsection**  
151 **does not conform with a federal statute or would result in the loss to the state of any federal**  
152 **funds otherwise available to it the commission may administer this subsection to conform**  
153 **with the federal statute until the general assembly meets in its next regular session and has**  
154 **an opportunity to amend this subsection.**

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

157 **(b) The commission is authorized to enter financial agreements with any lender that**  
158 **result in reducing or avoiding the need to borrow or obtain an advance under 42 U.S.C.,**  
159 **Section 1321, or any similar federal legislation. The total amount of the outstanding**  
160 **obligation under the agreement shall not exceed the difference of four hundred fifty million**  
161 **dollars and the bond indebtedness incurred under this subsection. In no instance shall**

162 **such indebtedness under any financial agreement continue for more than five consecutive**  
163 **years. Repayment of obligations to lenders shall be made from the special employment**  
164 **security fund, section 288.310.**

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

**288.385. 1. Except as otherwise specifically provided by law, it shall be unlawful**  
2 **for the director of the division of employment security, any officer, employee, agent or**  
3 **deputy or former director, officer, employee, agent or deputy of the division of employment**  
4 **security, any person engaged or retained by the division of employment security on an**  
5 **independent contract basis, any person to whom authorized or unauthorized disclosure is**  
6 **made by the division of employment security, or any person who lawfully or unlawfully**  
7 **inspects any report or return filed with the division of employment security or to whom a**  
8 **copy, an abstract or a portion of any report or return is furnished by the division of**  
9 **employment security to make known in any manner, to permit the inspection or use of or**  
10 **to divulge to anyone any information relative to any such report or return, any information**  
11 **obtained by an investigation conducted by the department in the discharge of an official**  
12 **duty, or any information received by the director in cooperation with the United States or**  
13 **other states in the enforcement of the employment laws of this state. Such confidential**  
14 **information is limited to information received by the division in connection with the**  
15 **administration of the employment security laws of this state.**

16 **2.** Nothing in this section shall be construed to prohibit the disclosure of  
17 information, returns, reports, or facts shown thereby, as described in subsection 1 of this  
18 section, by any officer, clerk or other employee of the division of employment security  
19 charged with the custody of such information:

20 **(1) To an employee or the employee's duly authorized representative under**  
21 **regulations which the director of the division of employment security may prescribe; or**

22 **(2) In any action or proceeding, civil, criminal or mixed, brought to enforce the**  
23 **employment security laws of this state.**

24 **3.** Any person violating any provision of subsection 1 or 2 of this section shall, upon  
25 conviction, be guilty of a class D felony.

26 **4.** The department of labor and industrial relations by and through the division  
27 may analyze and project financial data for proposed legislation. In doing so the



28 department and the division shall provide any financial data, projections, or models  
29 relating to pending legislation to the sponsor or sponsors of such legislation at least forty-  
30 eight hours prior to making such information public. Failure to comply with this  
31 subsection shall result in a five hundred dollar civil penalty per violation levied against the  
32 agent or employee of the department or division responsible for such violation.

288.395. Any person or entity perpetrating a fraud or misrepresentation under this  
2 chapter for which a penalty has not herein been specifically provided, shall be guilty of a  
3 class A misdemeanor and, in addition, shall be liable to this state for a civil penalty not to  
4 exceed double the value of the fraud. Any person or entity who has previously pled guilty  
5 to or has been found guilty of perpetrating a fraud or misrepresentation under this chapter  
6 and who subsequently violated any such provisions shall be guilty of a class D felony.

288.397. The division shall send on or before September 30, 2004, to all employing  
2 units a report containing a summary of changes enacted in this act including but not  
3 limited to changes in the tax rate, contribution rate, taxable wage base, temporary solvency  
4 charges, benefit or eligibility charges, and other pertinent information to enable the  
5 employing units to comply with the changes made.

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

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

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

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

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

35           **3. The division shall provide professional and clerical assistance as needed for**  
36 **regularly scheduled meetings.**

37           **4. Each nonvoting member shall serve for a term of four years or until he or she is**  
38 **no longer a member of the general assembly whichever occurs first. A nonvoting member's**  
39 **term shall be a maximum of four years. Each voting member shall serve for a term of**  
40 **three years. For the initial appointment, the governor-appointed employer representative,**  
41 **the speaker of the house-appointed employee representative, and the president pro tem of**  
42 **the senate-appointed public interest representative shall serve an initial term of one year.**  
43 **For the initial appointment, the governor-appointed employee representative, the speaker**  
44 **of the house-appointed public interest representative, and the president pro tem of the**  
45 **senate-appointed employer representative shall serve an initial term of two years. At the**  
46 **end of a voting member's term he or she may be reappointed; however, he or she shall**  
47 **serve no more than two terms excluding the initial term for a maximum of eight years.**

48           **5. The council shall advise the division in carrying out the purposes of this chapter.**  
49 **The council shall submit annually by January fifteenth to the governor and the general**  
50 **assembly its recommendations regarding amendments of this chapter, the status of**  
51 **unemployment insurance, the projected maintenance of the solvency of unemployment**  
52 **insurance, and the adequacy of unemployment compensation.**

53           **6. The council shall present to the division every proposal of the council for changes**  
54 **in this chapter and shall seek the division's concurrence with the proposal. The division**  
55 **shall give careful consideration to every proposal submitted by the council for legislative**

56 or administrative action and shall review each legislative proposal for possible  
57 incorporation into department of labor and industrial relations recommendations.

58 7. The council shall have access to only the records of the division that are  
59 necessary for the administration of this chapter and to the reasonable services of the  
60 employees of the division. It may request the director or any of the employees appointed  
61 by the director or any employee subject to this chapter, to appear before it and to testify  
62 relative to the functioning of this chapter and to other relevant matters. The council may  
63 conduct research of its own, make and publish reports, and recommend to the division  
64 needed changes in this chapter or in the rules of the division as it considers necessary.

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

2 **Section 2. The department of labor and industrial relations may contract with a**  
3 **private entity for the purpose of identifying and recovering overpayments to employees**  
4 **and collection of delinquent employer contributions.**

5 Section B. Because immediate action is necessary to reduce or avoid the need to borrow  
2 or obtain advances under 42 U.S.C., Section 1321, section A of this act is deemed necessary for  
3 the immediate preservation of the public health, welfare, peace, and safety, and is hereby  
4 declared to be an emergency act within the meaning of the constitution, and section A of this act  
5 shall be in full force and effect upon its passage and approval.