

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE NO. 2

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1456

AN ACT

To repeal sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, and to enact in lieu thereof twenty-one new sections relating to employment security, with penalty provisions and an effective date.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

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288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.046, 288.050,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

288.030. 1. As used in this chapter, unless the context

1 clearly requires otherwise, the following terms mean:

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

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

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

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

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

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

28 (7) "Commission", the labor and industrial relations

1 commission of Missouri;

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

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

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

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

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

17 (13) "Director", the administrative head of the division of  
18 employment security;

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

21 (15) "Employing unit", any individual, organization,  
22 partnership, corporation, common paymaster, or other legal  
23 entity, including the legal representatives thereof, which has  
24 or, subsequent to June 17, 1937, had in its employ one or more  
25 individuals performing services for it within this state. All  
26 individuals performing services within this state for any  
27 employing unit which maintains two or more separate  
28 establishments within this state shall be deemed to be employed

1 by a single employing unit for all the purposes of this chapter.  
2 Each individual engaged to perform or to assist in performing the  
3 work of any person in the service of an employing unit shall be  
4 deemed to be engaged by such employing unit for all the purposes  
5 of this chapter, whether such individual was engaged or paid  
6 directly by such employing unit or by such person, provided the  
7 employing unit had actual or constructive knowledge of the work;

8 (16) "Employment office", a free public employment office  
9 operated by this or any other state as a part of a state  
10 controlled system of public employment offices including any  
11 location designated by the state as being a part of the one-stop  
12 career system;

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

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

19 (19) "Governmental entity", the state, any political  
20 subdivision thereof, any instrumentality of any one or more of  
21 the foregoing which is wholly owned by this state and one or more  
22 other states or political subdivisions and any instrumentality of  
23 this state or any political subdivision thereof and one or more  
24 other states or political subdivisions;

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

28 (21) "Insured work", employment in the service of an

1 employer;

2 (22) (a) As to initial claims filed after December 31,  
3 1990, "insured worker", a worker who has been paid wages for  
4 insured work in the amount of one thousand dollars or more in at  
5 least one calendar quarter of such worker's base period and total  
6 wages in the worker's base period equal to at least one and  
7 one-half times the insured wages in that calendar quarter of the  
8 base period in which the worker's insured wages were the highest,  
9 or in the alternative, a worker who has been paid wages in at  
10 least two calendar quarters of such worker's base period and  
11 whose total base period wages are at least one and one-half times  
12 the maximum taxable wage base, taxable to any one employer, in  
13 accordance with subsection 2 of section 288.036. For the  
14 purposes of this definition, "wages" shall be considered as wage  
15 credits with respect to any benefit year, only if such benefit  
16 year begins subsequent to the date on which the employing unit by  
17 which such wages were paid has become an employer;

18 (b) As to initial claims filed after December 31, 2004,  
19 wages for insured work in the amount of one thousand two hundred  
20 dollars or more, after December 31, 2005, one thousand three  
21 hundred dollars or more, after December 31, 2006, one thousand  
22 four hundred dollars or more, after December 31, 2007, one  
23 thousand five hundred dollars or more in at least one calendar  
24 quarter of such worker's base period and total wages in the  
25 worker's base period equal to at least one and one-half times the  
26 insured wages in that calendar quarter of the base period in  
27 which the worker's insured wages were the highest, or in the  
28 alternative, a worker who has been paid wages in at least two

1 calendar quarters of such worker's base period and whose total  
2 base period wages are at least one and one-half times the maximum  
3 taxable wage base, taxable to any one employer, in accordance  
4 with subsection 2 of section 288.036;

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

7 (24)] "Misconduct", an act of wanton or willful disregard of  
8 the employer's interest, a deliberate violation of the employer's  
9 rules, a disregard of standards of behavior which the employer  
10 has the right to expect of his or her employee, or negligence in  
11 such degree or recurrence as to manifest culpability, wrongful  
12 intent or evil design, or show an intentional and substantial  
13 disregard of the employer's interest or of the employee's duties  
14 and obligations to the employer;

15 [(25)] (24) "Referee", a representative of the division  
16 designated to serve on an appeals tribunal;

17 [(26)] (25) "State" includes, in addition to the states of  
18 the United States of America, the District of Columbia, Puerto  
19 Rico, the Virgin Islands, and the Dominion of Canada;

20 [(27)] (26) "Temporary employee", an employee assigned to  
21 work for the clients of a temporary help firm;

22 [(28)] (27) "Temporary help firm", a firm that hires its  
23 own employees and assigns them to clients to support or  
24 supplement the clients' workforce in work situations such as  
25 employee absences, temporary skill shortages, seasonal workloads,  
26 and special assignments and projects;

27 [(29)] (28) (a) An individual shall be deemed "totally  
28 unemployed" in any week during which the individual performs no

1 services and with respect to which no wages are payable to such  
2 individual;

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

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

14 (c) An individual's "week of unemployment" shall begin the  
15 first day of the calendar week in which the individual registers  
16 at an employment office except that, if for good cause the  
17 individual's registration is delayed, the week of unemployment  
18 shall begin the first day of the calendar week in which the  
19 individual would have otherwise registered. The requirement of  
20 registration may by regulation be postponed or eliminated in  
21 respect to claims for partial unemployment or may by regulation  
22 be postponed in case of a mass layoff due to a temporary  
23 cessation of work;

24 [(30)] (29) "Waiting week", the first week of unemployment  
25 for which a claim is allowed in a benefit year or if no waiting  
26 week has occurred in a benefit year in effect on the effective  
27 date of a shared work plan, the first week of participation in a  
28 shared work unemployment compensation program pursuant to section

1       288.500.

2           2. The Missouri average annual wage shall be computed as of  
3 June thirtieth of each year, and shall be applicable to the  
4 following calendar year. The Missouri average annual wage shall  
5 be calculated by dividing the total wages reported as paid for  
6 insured work in the preceding calendar year by the average of  
7 mid-month employment reported by employers for the same calendar  
8 year. The Missouri average weekly wage shall be computed by  
9 dividing the Missouri average annual wage as computed in this  
10 subsection by fifty-two.

11       288.032. 1. After December 31, 1977, "employer" means:

12           (1) Any employing unit which in any calendar quarter in  
13 either the current or preceding calendar year paid for service in  
14 employment wages of one thousand five hundred dollars or more  
15 except that for the purposes of this definition, wages paid for  
16 "agricultural labor" as defined in paragraph (a) of subdivision  
17 (1) of subsection 12 of section 288.034 and for "domestic  
18 services" as defined in subdivisions (2) and (13) of subsection  
19 12 of section 288.034 shall not be considered;

20           (2) Any employing unit which for some portion of a day in  
21 each of twenty different calendar weeks, whether or not such  
22 weeks were consecutive, in either the current or the preceding  
23 calendar year, had in employment at least one individual  
24 (irrespective of whether the same individual was in employment in  
25 each such day); except that for the purposes of this definition,  
26 services performed in "agricultural labor" as defined in  
27 paragraph (a) of subdivision (1) of subsection 12 of section  
28 288.034 and in "domestic services" as defined in subdivisions (2)



1 and (13) of subsection 12 of section 288.034 shall not be  
2 considered;

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

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

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

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

15 (7) Any individual, type of organization or employing unit  
16 which has been determined to be a successor pursuant to section  
17 288.110;

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

21 (9) Any individual, type of organization or employing unit  
22 which, having become an employer, has not pursuant to section  
23 288.080 ceased to be an employer;

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

1           2. (1) Notwithstanding any other provisions of this law,  
2 any employer, individual, organization, partnership, corporation,  
3 other legal entity or employing unit that meets the definition of  
4 "lessor employing unit", as defined in subdivision (5) of this  
5 subsection, shall be liable for contributions on wages paid by  
6 the lessor employing unit to individuals performing services for  
7 client lessees of the lessor employing unit. Unless the lessor  
8 employing unit has timely complied with the provisions of  
9 subdivision (3) of this subsection, any employer, individual,  
10 organization, partnership, corporation, other legal entity or  
11 employing unit which is leasing individuals from any lessor  
12 employing unit shall be jointly and severally liable for any  
13 unpaid contributions, interest and penalties due pursuant to this  
14 law from any lessor employing unit attributable to wages for  
15 services performed for the client lessee entity by individuals  
16 leased to the client lessee entity, and the lessor employing unit  
17 shall keep separate records and submit separate quarterly  
18 contribution and wage reports for each of its client lessee  
19 entities. Delinquent contributions, interest and penalties shall  
20 be collected in accordance with the provisions of this chapter.

21           (2) Notwithstanding the provisions of subdivision (1) of  
22 this subsection, any governmental entity or nonprofit  
23 organization that meets the definition of "lessor employing  
24 unit", as defined in subdivision (5) of this subsection, and has  
25 elected to become liable for payments in lieu of contributions as  
26 provided in subsection 3 of section 288.090, shall pay the  
27 division payments in lieu of contributions, interest, penalties  
28 and surcharges in accordance with section 288.090 on benefits

1 paid to individuals performing services for the client lessees of  
2 the lessor employing unit. If the lessor employing unit has not  
3 timely complied with the provisions of subdivision (3) of this  
4 subsection, any client lessees with services attributable to and  
5 performed for the client lessees shall be jointly and severally  
6 liable for any unpaid payments in lieu of contributions,  
7 interest, penalties and surcharges due pursuant to this law. The  
8 lessor employing unit shall keep separate records and submit  
9 separate quarterly contribution and wage reports for each of its  
10 client lessees. Delinquent payments in lieu of contributions,  
11 interest, penalties and surcharges shall be collected in  
12 accordance with subsection 3 of section 288.090. The election to  
13 be liable for payments in lieu of contributions made by a  
14 governmental entity or nonprofit organization meeting the  
15 definition of "lessor employing unit" may be terminated by the  
16 division in accordance with subsection 3 of section 288.090.

17 (3) In order to relieve a client lessees from joint and  
18 several liability and the separate reporting requirements imposed  
19 pursuant to this subsection, any lessor employing unit may post  
20 and maintain a surety bond issued by a corporate surety  
21 authorized to do business in Missouri in an amount equivalent to  
22 the contributions or payments in lieu of contributions for which  
23 the lessor employing unit was liable in the last calendar year in  
24 which he or she accrued contributions or payments in lieu of  
25 contributions, or one hundred thousand dollars, whichever amount  
26 is the greater, to ensure prompt payment of contributions or  
27 payments in lieu of contributions, interest, penalties and  
28 surcharges for which the lessor employing unit may be, or

1 becomes, liable pursuant to this law. In lieu of a surety bond,  
2 the lessor employing unit may deposit in a depository designated  
3 by the director, securities with marketable value equivalent to  
4 the amount required for a surety bond. The securities so  
5 deposited shall include authorization to the director to sell any  
6 securities in an amount sufficient to pay any contributions or  
7 payments in lieu of contributions, interest, penalties and  
8 surcharges which the lessor employing unit fails to promptly pay  
9 when due. In lieu of a surety bond or securities as described in  
10 this subdivision, any lessor employing unit may provide the  
11 director with an irrevocable letter of credit, as defined in  
12 section 409.5-103, RSMo, issued by any state or federally  
13 chartered financial institution, in an amount equivalent to the  
14 amount required for a surety bond as described in this  
15 subdivision. In lieu of a surety bond, securities or an  
16 irrevocable letter of credit, a lessor employing unit may obtain  
17 a certificate of deposit issued by any state or federally  
18 chartered financial institution, in an amount equivalent to the  
19 amount required for a surety bond as described in this  
20 subdivision. The certificate of deposit shall be pledged to the  
21 director until release by the director. As used in this  
22 subdivision, the term "certificate of deposit" means a  
23 certificate representing any deposit of funds in a state or  
24 federally chartered financial institution for a specified period  
25 of time which earns interest at a fixed or variable rate, where  
26 such funds cannot be withdrawn prior to a specified time without  
27 forfeiture of some or all of the earned interest.

28 (4) Any lessor employing unit which is currently engaged in

1 the business of leasing individuals to client lessees shall  
2 comply with the provisions of subdivision (3) of this subsection  
3 by September 28, 1992. Lessor employing units not currently  
4 engaged in the business of leasing individuals to client lessees  
5 shall comply with subdivision (3) of this subsection before  
6 entering into a written lease agreement with client lessees.

7 (5) As used in this subsection, the term "lessor employing  
8 unit" means an independently established business entity,  
9 governmental entity as defined in subsection 1 of section 288.030  
10 or nonprofit organization as defined in subsection 3 of section  
11 288.090 which, pursuant to a written lease agreement between the  
12 lessor employing unit and the client lessees, engages in the  
13 business of providing individuals to any other employer,  
14 individual, organization, partnership, corporation, other legal  
15 entity or employing unit referred to in this subsection as a  
16 client lessee.

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

23 3. After September 30, 1986, notwithstanding any provision  
24 of section 288.034, for the purpose of this law, in no event  
25 shall a for-hire motor carrier as regulated by the Missouri  
26 division of motor carrier and railroad safety or whose operations  
27 are confined to a commercial zone be determined to be the  
28 employer of a lessor as defined in [section 288.030 or of a

1 driver receiving remuneration from a lessor] 49 CFR section  
2 376.2(f), or of a driver receiving remuneration from a lessor as  
3 defined in 49 CFR section 376.2(f), provided, however, the term  
4 "for-hire motor carrier" shall in no event include an  
5 organization described in Section 501(c)(3) of the Internal  
6 Revenue Code or any governmental entity.

7 4. The owner or operator of a beauty salon or similar  
8 establishment shall not be determined to be the employer of a  
9 person who utilizes the facilities of the owner or operator but  
10 who receives neither salary, wages or other compensation from the  
11 owner or operator and who pays the owner or operator rent or  
12 other payments for the use of the facilities.

13 288.035. Notwithstanding the provisions of section 288.034,  
14 RSMo, in the case of an individual who is the owner, as defined  
15 in subsection 43 of section 301.010, RSMo, and operator of a  
16 motor vehicle which is leased or contracted with a driver to a  
17 for-hire common or contract motor vehicle carrier operating  
18 within a commercial zone as defined in section 390.020 or  
19 390.041, or operating under a certificate issued by [the motor  
20 carrier and railroad safety division of the department of  
21 economic development under provisions of this chapter or by the  
22 interstate commerce commission] the Missouri department of  
23 transportation or by the United States Department of  
24 Transportation or any of its subagencies, such owner/operator  
25 shall not be deemed to be an employee, provided, however, such  
26 individual owner and operator shall be deemed to be in employment  
27 if the for-hire common or contract vehicle carrier is an  
28 organization described in section 501(c)(3) of the Internal

1 Revenue Code or any governmental entity.

2 288.036. 1. "Wages" means all remuneration, payable or  
3 paid, for personal services including commissions and bonuses  
4 and, except as provided in subdivision (7) of this section, the  
5 cash value of all remuneration paid in any medium other than  
6 cash. Gratuities, including tips received from persons other  
7 than the employing unit, shall be considered wages only if  
8 required to be reported as wages pursuant to the Federal  
9 Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the  
10 purposes of this chapter, treated as having been paid by the  
11 employing unit. Severance pay shall be considered as wages to  
12 the extent required pursuant to the Federal Unemployment Tax Act,  
13 26 U.S.C. Section 3306(b). Vacation pay and holiday pay shall be  
14 considered as wages for the week with respect to which it is  
15 payable. The term "wages" shall not include:

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

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

27 (b) Medical and hospitalization expenses in connection with  
28 sickness or accident disability; or

1           (c) Death;

2           (2) The amount of any payment on account of sickness or  
3 accident disability, or medical or hospitalization expenses in  
4 connection with sickness or accident disability, made by an  
5 employing unit to, or on behalf of, an individual performing  
6 services for it after the expiration of six calendar months  
7 following the last calendar month in which the individual  
8 performed services for such employing unit;

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

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

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

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

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



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

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

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

17           2. The increases or decreases to the state taxable wage  
18 base for the remainder of calendar year 2004 shall be eight  
19 thousand dollars, and the state taxable wage base in calendar  
20 year 2005, and each calendar year thereafter, shall be determined  
21 by the provisions within this subsection. On January 1, 2005,  
22 the state taxable wage base for calendar year 2005, 2006, and  
23 2007 shall be eleven thousand dollars. The taxable wage base for  
24 calendar year 2008[, and each year thereafter,] shall be twelve  
25 thousand dollars. The state taxable wage base for each calendar  
26 year thereafter shall be determined by the [preceding September  
27 thirtieth balance] average balance of the unemployment  
28 compensation trust fund of the four preceding calendar quarters

1     (September thirtieth, June thirtieth, March thirty-first, and  
2     December thirty-first of the preceding calendar year), less any  
3     outstanding federal Title XII advances received pursuant to  
4     section 288.330, [or if the fund is not utilizing moneys advanced  
5     by the federal government, then less the principal, interest, and  
6     administrative expenses related to credit instruments issued  
7     under section 288.330, or the principal, interest, and  
8     administrative expenses related to financial agreements under  
9     subdivision (17) of subsection 2 of section 288.330, or the  
10    principal, interest, and administrative expenses related to a  
11    combination of Title XII advances, credit instruments, and  
12    financial agreements] less the principal, interest, and  
13    administrative expenses related to any credit instrument issued  
14    under section 288.030, and less the principal, interest, and  
15    administrative expenses related to any financial agreements under  
16    subdivision (17) of subsection 2 of section 288.330. When the  
17    [September thirtieth unemployment compensation trust fund  
18    balance, or, if the] average balance[, less any federal advances]  
19    of the unemployment compensation trust fund of the four preceding  
20    quarters (September thirtieth, June thirtieth, March  
21    thirty-first, and December thirty-first of the preceding calendar  
22    year) [is less any outstanding federal Title XII advances  
23    received pursuant to section 288.330], as so determined is:

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

27           (2) Six hundred fifty million or more, then the state  
28    taxable wage base for the subsequent calendar year shall be

1 decreased by five hundred dollars. In no event, however, shall  
2 the state taxable wage base increase beyond twelve thousand five  
3 hundred dollars, or decrease to less than seven thousand dollars.  
4 For calendar year 2009, the tax wage base shall be twelve  
5 thousand five hundred dollars. For calendar year 2010 and each  
6 calendar year thereafter, in no event shall the state taxable  
7 wage base increase beyond thirteen thousand dollars, or decrease  
8 to less than seven thousand dollars.

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

16 288.038. With respect to initial claims filed during  
17 calendar years 2004 and 2005, the "maximum weekly benefit amount"  
18 means four percent of the total wages paid to an eligible insured  
19 worker during that quarter of the worker's base period in which  
20 the worker's wages were the highest, but the maximum weekly  
21 benefit amount shall not exceed two hundred fifty dollars in the  
22 calendar years 2004 and 2005. With respect to initial claims  
23 filed during calendar years 2006 and 2007 the "maximum weekly  
24 benefit amount" means [three and three-fourths] four percent of  
25 the total wages paid to an eligible insured worker during that  
26 quarter of the worker's base period in which the worker's wages  
27 were the highest, but the maximum weekly benefit amount shall not

1 exceed two hundred seventy dollars in calendar year 2006 and the  
2 maximum weekly benefit amount shall not exceed two hundred eighty  
3 dollars in calendar year 2007. With respect to initial claims  
4 filed during calendar year 2008 and each calendar year  
5 thereafter, the "maximum weekly benefit amount" means four  
6 percent of the total wages paid to an eligible insured worker  
7 during the average of the two highest quarters of the worker's  
8 base period, but the maximum weekly benefit amount shall not  
9 exceed three hundred [dollars in calendar year 2008, three  
10 hundred ten dollars in calendar year 2009, three hundred] twenty  
11 dollars [in calendar year 2010, and each calendar year  
12 thereafter]. If such benefit amount is not a multiple of one  
13 dollar, such amount shall be reduced to the nearest lower full  
14 dollar amount.

15 288.040. 1. A claimant who is unemployed and has been  
16 determined to be an insured worker shall be eligible for benefits  
17 for any week only if the deputy finds that:

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

21 (2) The claimant is able to work and is available for work.  
22 No person shall be deemed available for work unless such person  
23 has been and is actively and earnestly seeking work. Upon the  
24 filing of an initial or renewed claim, and prior to the filing of  
25 each weekly claim thereafter, the deputy shall notify each  
26 claimant of the number of work search contacts required to  
27 constitute an active search for work. No person shall be  
28 considered not available for work, pursuant to this subdivision,

1 solely because he or she is a substitute teacher or is on jury  
2 duty. A claimant shall not be determined to be ineligible  
3 pursuant to this subdivision because of not actively and  
4 earnestly seeking work if:

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

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

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

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

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

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

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

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

13           (4) Prior to the first week of a period of total or partial  
14 unemployment for which the claimant claims benefits he or she has  
15 been totally or partially unemployed for a waiting period of one  
16 week. No more than one waiting week will be required in any  
17 benefit year. During calendar year 2008 and each calendar year  
18 thereafter, the one-week waiting period shall become compensable  
19 once his or her remaining balance on the claim is equal to or  
20 less than the compensable amount for the waiting period. No week  
21 shall be counted as a week of total or partial unemployment for  
22 the purposes of this subsection unless it occurs within the  
23 benefit year which includes the week with respect to which the  
24 claimant claims benefits;

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

26           (6) The claimant is participating in reemployment services,  
27 such as job search assistance services, as directed by the deputy

1 if the claimant has been determined to be likely to exhaust  
2 regular benefits and to need reemployment services pursuant to a  
3 profiling system established by the division, unless the deputy  
4 determines that:

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

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

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

14 3. (1) Benefits based on "service in employment", defined  
15 in subsections 7 and 8 of section 288.034, shall be payable in  
16 the same amount, on the same terms and subject to the same  
17 conditions as compensation payable on the basis of other service  
18 subject to this law; except that:

19 (a) With respect to service performed in an instructional,  
20 research, or principal administrative capacity for an educational  
21 institution, benefits shall not be paid based on such services  
22 for any week of unemployment commencing during the period between  
23 two successive academic years or terms, or during a similar  
24 period between two regular but not successive terms, or during a  
25 period of paid sabbatical leave provided for in the individual's  
26 contract, to any individual if such individual performs such  
27 services in the first of such academic years (or terms) and if  
28 there is a contract or a reasonable assurance that such

1 individual will perform services in any such capacity for any  
2 educational institution in the second of such academic years or  
3 terms;

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

13 (c) With respect to services described in paragraphs (a)  
14 and (b) of this subdivision, benefits shall not be paid on the  
15 basis of such services to any individual for any week which  
16 commences during an established and customary vacation period or  
17 holiday recess if such individual performed such services in the  
18 period immediately before such vacation period or holiday recess,  
19 and there is reasonable assurance that such individual will  
20 perform such services immediately following such vacation period  
21 or holiday recess;

22 (d) With respect to services described in paragraphs (a)  
23 and (b) of this subdivision, benefits payable on the basis of  
24 services in any such capacity shall be denied as specified in  
25 paragraphs (a), (b), and (c) of this subdivision to any  
26 individual who performed such services at an educational  
27 institution while in the employ of an educational service agency,  
28 and for this purpose the term "educational service agency" means



1 a governmental agency or governmental entity which is established  
2 and operated exclusively for the purpose of providing such  
3 services to one or more educational institutions.

4 (2) If compensation is denied for any week pursuant to  
5 paragraph (b) or (d) of subdivision (1) of this subsection, to  
6 any individual performing services at an educational institution  
7 in any capacity (other than instructional, research or principal  
8 administrative capacity), and such individual was not offered an  
9 opportunity to perform such services for the second of such  
10 academic years or terms, such individual shall be entitled to a  
11 retroactive payment of the compensation for each week for which  
12 the individual filed a timely claim for compensation and for  
13 which compensation was denied solely by reason of paragraph (b)  
14 or (d) of subdivision (1) of this subsection.

15 4. (1) A claimant shall be ineligible for waiting week  
16 credit, benefits or shared work benefits for any week for which  
17 he or she is receiving or has received remuneration exceeding his  
18 or her weekly benefit amount or shared work benefit amount in the  
19 form of:

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

23 (b) A governmental or other pension, retirement or retired  
24 pay, annuity, or other similar periodic payment which is based on  
25 the previous work of such claimant to the extent that such  
26 payment is provided from funds provided by a base period or  
27 chargeable employer pursuant to a plan maintained or contributed  
28 to by such employer; but, except for such payments made pursuant

1 to the Social Security Act or the Railroad Retirement Act of 1974  
2 (or the corresponding provisions of prior law), the provisions of  
3 this paragraph shall not apply if the services performed for such  
4 employer by the claimant after the beginning of the base period  
5 (or remuneration for such services) do not affect eligibility for  
6 or increase the amount of such pension, retirement or retired  
7 pay, annuity or similar payment.

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

14 (3) Notwithstanding the provisions of subdivisions (1) and  
15 (2) of this subsection, if a claimant has contributed in any way  
16 to the Social Security Act or the Railroad Retirement Act of  
17 1974, or the corresponding provisions of prior law, no part of  
18 the payments received pursuant to such federal law shall be  
19 deductible from the amount of benefits received pursuant to this  
20 chapter.

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

28 6. (1) A claimant shall be ineligible for waiting week

1 credit or benefits for any week for which the deputy finds that  
2 such claimant's total or partial unemployment is due to a  
3 stoppage of work which exists because of a labor dispute in the  
4 factory, establishment or other premises in which such claimant  
5 is or was last employed. In the event the claimant secures other  
6 employment from which he or she is separated during the existence  
7 of the labor dispute, the claimant must have obtained bona fide  
8 employment as a permanent employee for at least the major part of  
9 each of two weeks in such subsequent employment to terminate his  
10 or her ineligibility. If, in any case, separate branches of work  
11 which are commonly conducted as separate businesses at separate  
12 premises are conducted in separate departments of the same  
13 premises, each such department shall for the purposes of this  
14 subsection be deemed to be a separate factory, establishment or  
15 other premises. This subsection shall not apply if it is shown  
16 to the satisfaction of the deputy that:

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

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

25 (2) "Stoppage of work" as used in this subsection means a  
26 substantial diminution of the activities, production or services  
27 at the establishment, plant, factory or premises of the employing  
28 unit. This definition shall not apply to a strike where the

1 employees in the bargaining unit who initiated the strike are  
2 participating in the strike. Such employees shall not be  
3 eligible for waiting week credit or benefits during the period  
4 when the strike is in effect, regardless of diminution, unless  
5 the employer has been found guilty of an unfair labor practice by  
6 the National Labor Relations Board or a federal court of law for  
7 an act or actions preceding or during the strike.

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

17 8. Benefits shall not be payable on the basis of services  
18 performed by an alien, unless such alien is an individual who was  
19 lawfully admitted for permanent residence at the time such  
20 services were performed, was lawfully present for purposes of  
21 performing such services, or was permanently residing in the  
22 United States under color of law at the time such services were  
23 performed (including an alien who was lawfully present in the  
24 United States as a result of the application of the provisions of  
25 Section 212(d)(5) of the Immigration and Nationality Act).

26 (1) Any data or information required of individuals  
27 applying for benefits to determine whether benefits are not  
28 payable to them because of their alien status shall be uniformly

1 required from all applicants for benefits.

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

7 9. The directors of the division of employment security and  
8 the division of workforce development shall submit to the  
9 governor, the speaker of the house of representatives, and the  
10 president pro tem of the senate no later than October 15, 2006, a  
11 report outlining their recommendations for how to improve work  
12 search verification and claimant re-employment activities. The  
13 recommendations shall include, but not limited to how to best  
14 utilize "greathires.org", and how to reduce the average duration  
15 of unemployment insurance claims. Each calendar year thereafter,  
16 the directors shall submit a report containing their  
17 recommendations on these issues by December thirty-first of each  
18 year.

19 288.045. 1. If a claimant is at work with a detectible  
20 amount of alcohol or a controlled substance as defined in section  
21 195.010, RSMo, in the claimant's system, in violation of the  
22 employer's alcohol and controlled substance workplace policy, the  
23 claimant shall have committed misconduct connected with the  
24 claimant's work.

25 2. [For carboxy-tetrahydrocannabinol, a chemical test  
26 result of fifty nannograms per milliliter or more shall be  
27 considered a detectible amount. For alcohol, a blood alcohol  
28 content of eight-hundredths of one percent or more by weight of

1 alcohol in the claimant's blood shall be considered a detectible  
2 amount.

3 3. If the] A test [is] conducted by a laboratory certified  
4 by the United States Department of [Transportation, the test  
5 results] Health and Human Services, or another certifying  
6 organization so long as the certification requirements meet the  
7 minimum standards of the United States Department of Health and  
8 Human Services, and the laboratory's trial packet shall be  
9 included in the administrative record and considered as evidence.

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

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

1 randomly.

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

7 7.] An employer may require a preemployment test for  
8 alcohol or controlled substance use as a condition of employment,  
9 and test results shall be admissible so long as the claimant was  
10 informed of the test requirement prior to taking the test. A  
11 random, preemployment, reasonable suspicion or post-accident test  
12 result, conducted under this section, which is positive for  
13 alcohol or controlled substance use shall be considered  
14 misconduct.

15 5. The application [of the alcohol and controlled substance  
16 testing provisions] of this section for alcohol and controlled  
17 substance testing, relating only to methods of testing, criteria  
18 for testing, chain of custody for samples or specimens and due  
19 process for employee notification procedures shall not apply in  
20 the event that the claimant is subject to the provisions of any  
21 applicable collective bargaining agreement, [which] so long as  
22 said agreement contains methods for alcohol or controlled  
23 substance testing that meet or exceed the minimum standards  
24 established in this section. Nothing in this chapter is intended  
25 to authorize any employer to test any applicant or employee for  
26 alcohol or drugs in any manner inconsistent with Missouri or  
27 United States constitution, law, statute or regulation, including  
28 those imposed by the Americans with Disabilities Act and the

1 National Labor Relations Act.

2 [8.] 6. All specimen collection [and testing] for drugs and  
3 alcohol under this chapter shall be performed in accordance with  
4 the procedures provided for by the United States Department of  
5 Transportation rules for workplace drug and alcohol testing  
6 compiled at 49 C.F.R., Part 40. Any employer that performs drug  
7 testing or specimen collection shall use chain-of-custody  
8 procedures established by regulations of the United States  
9 Department of Transportation. "Specimen" means tissue, fluid, or  
10 a product of the human body capable of revealing the presence of  
11 alcohol or drugs or their metabolites. "Chain of custody" refers  
12 to the methodology of tracking specified materials or substances  
13 for the purpose of maintaining control and accountability from  
14 initial collection to final disposition for all such materials or  
15 substances, and providing for accountability at each stage in  
16 handling, testing, and storing specimens and reporting test  
17 results.

18 [9. For this section to be applicable,] 7. The employee  
19 may request that a confirmation test on the specimen be  
20 conducted. "Confirmation test" means a second analytical  
21 procedure used to identify the presence of a specific drug or  
22 alcohol or metabolite in a specimen, which test must be different  
23 in scientific principle from that of the initial test procedure  
24 and must be capable of providing requisite specificity,  
25 sensitivity and quantitative accuracy. In the event that a  
26 confirmation test is requested, such shall be obtained from a  
27 separate, unrelated certified laboratory and shall be at the  
28 employee's expense only if said test confirms the original,



1 positive test results [as specified in subsection 2 of this  
2 section] . For purposes of this section, "confirmation test"  
3 shall be a split specimen test.

4 [10.] 8. Use of a controlled substance as defined under  
5 section 195.010, RSMo, under and in conformity with the lawful  
6 order of a healthcare practitioner, shall not be deemed to be  
7 misconduct connected with work for the purposes of this section.

8 [11.] 9. This section shall have no effect on employers who  
9 do not avail themselves of the requirements and regulations for  
10 alcohol and controlled drug testing determinations that are  
11 required to affirm misconduct connected with work findings.

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

17 [13. (1) In applying provisions of this chapter, it is the  
18 intent of the legislature to reject and abrogate previous case  
19 law interpretations of "misconduct connected with work" requiring  
20 a finding of evidence of impairment of work performance,  
21 including, but not limited to, the holdings contained in Baldor  
22 Electric Company v. Raylene Reasoner and Missouri Division of  
23 Employment Security, 66 S.W.3d 130 (Mo.App. E.D. 2001).

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

28 14.] 11. Notwithstanding any provision of this chapter to

1 the contrary, any claimant found to be in violation of this  
2 section shall be subject to the cancellation of all or part of  
3 the claimants wage credits as provided by [subdivision (2) of]  
4 subsection 2 of section 288.050.

5 288.046. 1. In applying provisions of this chapter, it is  
6 the intent of the general assembly to reject and abrogate  
7 previous case law interpretations of "misconduct connected with  
8 work" requiring a finding of evidence of impairment of work  
9 performance, including but not limited to, the holdings contained  
10 in Baldor Electric Company v. Raylene Reasoner and Missouri  
11 Division of Employment Security, 66 S.W.3d 130 (Mo.App. E.D.  
12 2001).

13 2. In determining whether misconduct connected with work  
14 has occurred, neither the state, any agency of the state, nor any  
15 court of the state of Missouri shall require a finding of  
16 evidence of impairment of work performance.

17 288.050. 1. Notwithstanding the other provisions of this  
18 law, a claimant shall be disqualified for waiting week credit or  
19 benefits until after the claimant has earned wages for work  
20 insured pursuant to the unemployment compensation laws of any  
21 state equal to ten times the claimant's weekly benefit amount if  
22 the deputy finds:

23 (1) That the claimant has left work voluntarily without  
24 good cause attributable to such work or to the claimant's  
25 employer. A temporary employee of a temporary help firm will be  
26 deemed to have voluntarily quit employment if the employee does  
27 not contact the temporary help firm for reassignment prior to  
28 filing for benefits. Failure to contact the temporary help firm

1 will not be deemed a voluntary quit unless the claimant has been  
2 advised of the obligation to contact the firm upon completion of  
3 assignments and that unemployment benefits may be denied for  
4 failure to do so. The claimant shall not be disqualified:

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

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

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

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

26 (2) That the claimant has retired pursuant to the terms of  
27 a labor agreement between the claimant's employer and a union  
28 duly elected by the employees as their official representative or

1 in accordance with an established policy of the claimant's  
2 employer; or

3 (3) That the claimant failed without good cause either to  
4 apply for available suitable work when so directed by [the] a  
5 deputy of the division or designated staff of an employment  
6 office as defined in subsection 16 of section 288.030, or to  
7 accept suitable work when offered the claimant, either through  
8 the division or directly by an employer by whom the individual  
9 was formerly employed, or to return to the individual's customary  
10 self-employment, if any, when so directed by the deputy. An  
11 offer of work shall be rebuttably presumed if an employer  
12 notifies the claimant in writing of such offer by sending an  
13 acknowledgment via any form of certified mail issued by the  
14 United States Postal Service stating such offer to the claimant  
15 at the claimant's last known address. Nothing in this  
16 subdivision shall be construed to limit the means by which the  
17 deputy may establish that the claimant has or has not been  
18 sufficiently notified of available work.

19 (a) In determining whether or not any work is suitable for  
20 an individual, the division shall consider, among other factors  
21 and in addition to those enumerated in paragraph (b) of this  
22 subdivision, the degree of risk involved to the individual's  
23 health, safety and morals, the individual's physical fitness and  
24 prior training, the individual's experience and prior earnings,  
25 the individual's length of unemployment, the individual's  
26 prospects for securing work in the individual's customary  
27 occupation, the distance of available work from the individual's  
28 residence and the individual's prospect of obtaining local work;

1       except that, if an individual has moved from the locality in  
2       which the individual actually resided when such individual was  
3       last employed to a place where there is less probability of the  
4       individual's employment at such individual's usual type of work  
5       and which is more distant from or otherwise less accessible to  
6       the community in which the individual was last employed, work  
7       offered by the individual's most recent employer if similar to  
8       that which such individual performed in such individual's last  
9       employment and at wages, hours, and working conditions which are  
10      substantially similar to those prevailing for similar work in  
11      such community, or any work which the individual is capable of  
12      performing at the wages prevailing for such work in the locality  
13      to which the individual has moved, if not hazardous to such  
14      individual's health, safety or morals, shall be deemed suitable  
15      for the individual;

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

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

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

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

1           2. If a deputy finds that a claimant has been discharged  
2 for misconduct connected with the claimant's work, such claimant  
3 shall be disqualified for waiting week credit and benefits, and  
4 no benefits shall be paid nor shall the cost of any benefits be  
5 charged against any employer for any period of employment within  
6 the base period until the claimant has earned wages for work  
7 insured under the unemployment laws of this state or any other  
8 state as prescribed in this section. In addition to the  
9 disqualification for benefits pursuant to this provision the  
10 division may in the more aggravated cases of misconduct, cancel  
11 all or any part of the individual's wage credits, which were  
12 established through the individual's employment by the employer  
13 who discharged such individual, according to the seriousness of  
14 the misconduct. A disqualification provided for pursuant to this  
15 subsection shall not apply to any week which occurs after the  
16 claimant has earned wages for work insured pursuant to the  
17 unemployment compensation laws of any state in an amount equal to  
18 six times the claimant's weekly benefit amount. Should a  
19 claimant be disqualified on a second or subsequent occasion  
20 within the base period or subsequent to the base period the  
21 claimant shall be required to earn wages in an amount equal to or  
22 in excess of six times the claimant's weekly benefit amount for  
23 each disqualification.

24           3. Absenteeism or tardiness may constitute a rebuttable  
25 presumption of misconduct, regardless of whether the last  
26 incident alone constitutes misconduct[. In determining whether  
27 the degree of absenteeism or tardiness constitutes a pattern for  
28 which misconduct may be found, the division shall consider

1 whether] , if the discharge was the result of a violation of the  
2 employer's attendance policy, provided the employee had received  
3 knowledge of such policy prior to the occurrence of any absence  
4 or tardy upon which the discharge is based.

5 4. Notwithstanding the provisions of subsection 1 of this  
6 section, a claimant may not be determined to be disqualified for  
7 benefits because the claimant is in training approved pursuant to  
8 Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A.  
9 Sec. 2296, as amended), or because the claimant left work which  
10 was not "suitable employment" to enter such training. For the  
11 purposes of this subsection "suitable employment" means, with  
12 respect to a worker, work of a substantially equal or higher  
13 skill level than the worker's past adversely affected employment,  
14 and wages for such work at not less than eighty percent of the  
15 worker's average weekly wage as determined for the purposes of  
16 the Trade Act of 1974.

17 288.060. 1. All benefits shall be paid through employment  
18 offices in accordance with such regulations as the division may  
19 prescribe.

20 2. Each eligible insured worker who is totally unemployed  
21 in any week shall be paid for such week a sum equal to his or her  
22 weekly benefit amount.

23 3. Each eligible insured worker who is partially unemployed  
24 in any week shall be paid for such week a partial benefit. Such  
25 partial benefit shall be an amount equal to the difference  
26 between his or her weekly benefit amount and that part of his or  
27 her wages for such week in excess of twenty dollars, and, if such  
28 partial benefit amount is not a multiple of one dollar, such

1 amount shall be reduced to the nearest lower full dollar amount.  
2 For calendar year 2007 and each year thereafter, such partial  
3 benefit shall be an amount equal to the difference between his or  
4 her weekly benefit amount and that part of his or her wages for  
5 such week in excess of twenty dollars or twenty percent of his or  
6 her weekly benefit amount, whichever is greater, and, if such  
7 partial benefit amount is not a multiple of one dollar, such  
8 amount shall be reduced to the nearest lower full dollar amount.  
9 Termination pay, severance pay or pay received by an eligible  
10 insured worker who is a member of the organized militia for  
11 training or duty authorized by section 502(a)(1) of Title 32,  
12 United States Code, shall not be considered wages for the purpose  
13 of this subsection.

14 4. The division shall compute the wage credits for each  
15 individual by crediting him or her with the wages paid to him or  
16 her for insured work during each quarter of his or her base  
17 period or twenty-six times his or her weekly benefit amount,  
18 whichever is the lesser. In addition, if a claimant receives  
19 wages in the form of termination pay or severance pay and such  
20 payment appears in a base period established by the filing of an  
21 initial claim, the claimant may, at his or her option, choose to  
22 have such payment included in the calendar quarter in which it  
23 was paid or choose to have it prorated equally among the quarters  
24 comprising the base period of the claim. The maximum total  
25 amount of benefits payable to any insured worker during any  
26 benefit year shall not exceed twenty-six times his or her weekly  
27 benefit amount, or thirty-three and one-third percent of his or  
28 her wage credits, whichever is the lesser. For the purpose of



1       this section, wages shall be counted as wage credits for any  
2       benefit year, only if such benefit year begins subsequent to the  
3       date on which the employing unit by whom such wages were paid has  
4       become an employer. The wage credits of an individual earned  
5       during the period commencing with the end of a prior base period  
6       and ending on the date on which he or she filed an allowed  
7       initial claim shall not be available for benefit purposes in a  
8       subsequent benefit year unless, in addition thereto, such  
9       individual has subsequently earned either wages for insured work  
10      in an amount equal to at least five times his or her current  
11      weekly benefit amount or wages in an amount equal to at least ten  
12      times his or her current weekly benefit amount.

13           5. In the event that benefits are due a deceased person and  
14      no petition has been filed for the probate of the will or for the  
15      administration of the estate of such person within thirty days  
16      after his or her death, the division may by regulation provide  
17      for the payment of such benefits to such person or persons as the  
18      division finds entitled thereto and every such payment shall be a  
19      valid payment to the same extent as if made to the legal  
20      representatives of the deceased.

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

25           7. The division may establish an electronic funds transfer  
26      system to transfer directly to claimants' accounts in financial  
27      institutions benefits payable to them pursuant to this chapter.  
28      To receive benefits by electronic funds transfer, a claimant

1 shall satisfactorily complete a direct deposit application form  
2 authorizing the division to deposit benefit payments into a  
3 designated checking or savings account. Any electronic funds  
4 transfer system created pursuant to this subsection shall be  
5 administered in accordance with regulations prescribed by the  
6 division.

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

9 9. Prior to January 1, 2005, the division shall institute  
10 procedures including, but not limited to, name, date of birth,  
11 and Social Security verification matches for remote claims filing  
12 via the use of telephone or the Internet in accordance with such  
13 regulations as the division shall prescribe. At a minimum, the  
14 division shall verify the Social Security number and date of  
15 birth when an individual claimant initially files for  
16 unemployment insurance benefits. If verification information  
17 does not match what is on file in division databases to what the  
18 individual is stating, the division shall require the claimant to  
19 submit a division-approved form requesting an affidavit of  
20 eligibility prior to the payment of additional future benefits.  
21 The division of employment security shall cross-check  
22 unemployment compensation applicants and recipients with Social  
23 Security Administration data maintained by the federal government  
24 [on the most frequent basis recommended by the United States  
25 Department of Labor, or absent a recommendation,] at least  
26 [monthly] weekly. The division of employment security shall  
27 cross-check at least monthly unemployment compensation applicants  
28 and recipients with department of revenue drivers license

databases.

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

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
-----	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%
-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%

1	5.5	6.0	2.2%
2	6.0	6.5	2.1%
3	6.5	7.0	2.0%
4	7.0	7.5	1.9%
5	7.5	8.0	1.8%
6	8.0	8.5	1.7%
7	8.5	9.0	1.6%
8	9.0	9.5	1.5%
9	9.5	10.0	1.4%
10	10.0	10.5	1.3%
11	10.5	11.0	1.2%
12	11.0	11.5	1.1%
13	11.5	12.0	1.0%
14	12.0	12.5	0.9%
15	12.5	13.0	0.8%
16	13.0	13.5	0.6%
17	13.5	14.0	0.4%
18	14.0	14.5	0.3%
19	14.5	15.0	0.2%
20	15.0	----	0.0%

2. Using the same mathematical principles used in constructing the table provided in subsection 1 of this section, the following table has been constructed. The contribution rate for the following calendar year of any employer participating in a shared work plan under section 288.500 during the current calendar year or any calendar year during a prior three-year period shall be determined from the balance in such employer's experience rating account as of the previous June thirtieth, or

1 within a reasonable time thereafter as may be fixed by  
2 regulation, from the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
-----	-27.0	9.0%
-27.0	-26.0	8.8%
-26.0	-25.0	8.6%
-25.0	-24.0	8.4%
-24.0	-23.0	8.2%
-23.0	-22.0	8.0%
-22.0	-21.0	7.8%
-21.0	-20.0	7.6%
-20.0	-19.0	7.4%
-19.0	-18.0	7.2%
-18.0	-17.0	7.0%
-17.0	-16.0	6.8%
-16.0	-15.0	6.6%
-15.0	-14.0	6.4%
-14.0	-13.0	6.2%
-13.0	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%

1	-5.0	-4.0	4.4%
2	-4.0	-3.0	4.2%
3	-3.0	-2.0	4.0%
4	-2.0	-1.0	3.8%
5	-1.0	0	3.6%
6	0	2.5	2.7%
7	2.5	3.5	2.6%
8	3.5	4.5	2.5%
9	4.5	5.0	2.4%
10	5.0	5.5	2.3%
11	5.5	6.0	2.2%
12	6.0	6.5	2.1%
13	6.5	7.0	2.0%
14	7.0	7.5	1.9%
15	7.5	8.0	1.8%
16	8.0	8.5	1.7%
17	8.5	9.0	1.6%
18	9.0	9.5	1.5%
19	9.5	10.0	1.4%
20	10.0	10.5	1.3%
21	10.5	11.0	1.2%
22	11.0	11.5	1.1%
23	11.5	12.0	1.0%
24	12.0	12.5	0.9%
25	12.5	13.0	0.8%
26	13.0	13.5	0.6%
27	13.5	14.0	0.4%
28	14.0	14.5	0.3%

1	14.5	15.0	0.2%
2	15.0	----	0.0%

3           3. Notwithstanding the provisions of subsection 2 of  
4 section 288.090, any employer participating in a shared work plan  
5 under section 288.500 who has not had at least twelve calendar  
6 months immediately preceding the calculation date throughout  
7 which his account could have been charged with benefits shall  
8 have a contribution rate equal to the highest contribution rate  
9 in the table in subsection 2 of this section, until such time as  
10 his account has been chargeable with benefits for the period of  
11 time sufficient to enable him to qualify for a computed rate on  
12 the same basis as other employers participating in shared work  
13 plans.

14           4. Employers who have been taxed at the maximum rate  
15 pursuant to this section for two consecutive years shall have a  
16 surcharge of one-quarter percent added to their contribution rate  
17 calculated pursuant to this section. In the event that an  
18 employer remains at the maximum rate pursuant to this section for  
19 a third or subsequent year, an additional surcharge of  
20 one-quarter percent shall be annually assessed, but in no case  
21 shall [this] the surcharge authorized in this subsection  
22 cumulatively exceed one percent. Additionally, if an employer  
23 continues to remain at the maximum rate pursuant to this section  
24 an additional surcharge of one-half percent shall be assessed.  
25 In no case shall the total surcharge assessed to any employer  
26 exceed one and one-half percent in any given year.

27           288.121. 1. On October first of each calendar year, if the  
28 average balance, less any federal advances, of the unemployment

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

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

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

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



experience account. [The temporary debt indebtedness assessment shall expire upon the last day of the fourth calendar quarter of 2007.]

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

Balance in Trust Fund		Percentage
More Than	[But] <u>Equal to or</u> Less Than	of
		Decrease
\$600,000,000	\$750,000,000	7%
\$750,000,000		12%

Notwithstanding the table in this section, if the balance in the unemployment insurance compensation trust fund as calculated in this section is more than seven hundred fifty million dollars, the percentage of decrease of the employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be no greater than ten percent for any employer whose calculated contribution rate under section 288.120 is six percent or greater.

288.128. 1. [In addition to all other contributions due

1 under this chapter,] If the fund is utilizing moneys advanced by  
2 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  
4 utilizing moneys advanced by the federal government, then from  
5 the proceeds of credit instruments issued under section 288.330,  
6 or from the moneys advanced under financial agreements under  
7 subdivision (17) of subsection 2 of section 288.330, or a  
8 combination of credit instruments proceeds and moneys advanced  
9 under financial agreements,] each employer [shall] may be  
10 assessed an amount solely for the payment of interest due on such  
11 federal advancements[, or if the fund is not utilizing moneys  
12 advanced by the federal government, or in the case of issuance of  
13 credit instruments for the payment of the principal, interest,  
14 and administrative expenses related to such credit instruments,  
15 or in the case of financial agreements for the payment of  
16 principal, interest, and administrative expenses related to such  
17 financial agreements, or in the case of a combination of credit  
18 instruments and financial agreements for the payment of  
19 principal, interest, and administrative expenses for both]. The  
20 rate shall be determined by dividing the interest due on federal  
21 advancements [or if the fund is not utilizing moneys advanced by  
22 the federal government, then the principal, interest, and  
23 administrative expenses related to credit instruments, or the  
24 principal, interest, and administrative expenses related to  
25 financial agreements under subdivision (17) of subsection 2 of  
26 section 288.330, or the principal, interest, and administrative  
27 expenses related to a combination of credit instruments and  
28 financial agreements] by ninety-five percent of the total taxable

1 wages paid by all Missouri employers in the preceding calendar  
2 year. Each employer's proportionate share shall be the product  
3 obtained by multiplying such employer's total taxable wages for  
4 the preceding calendar year by the rate specified in this  
5 section. Each employer shall be notified of the amount due under  
6 this section by June thirtieth of each year and such amount shall  
7 be considered delinquent thirty days thereafter. The moneys  
8 collected from each employer for the payment of interest due on  
9 federal advances[, or if the fund is not utilizing moneys  
10 advanced by the federal government, then the payment of  
11 principal, interest, and administrative expenses related to  
12 credit instruments, or the payment of the principal, interest,  
13 and administrative expenses related to financial agreements under  
14 subdivision (17) of subsection 2 of section 288.330, or the  
15 payment of the principal, interest, and administrative expenses  
16 related to a combination of credit instruments and financial  
17 agreements,] shall be deposited in the special employment  
18 security fund.

19 2. If on December thirty-first of any year the money  
20 collected under [this] subsection 1 of this section exceeds the  
21 amount of interest due on federal advancements by one hundred  
22 thousand dollars or more, then each employer's experience rating  
23 account shall be credited with an amount which bears the same  
24 ratio to the excess moneys collected under this section as that  
25 employer's payment collected under this section bears to the  
26 total amount collected under this section. Further, if on  
27 December thirty-first of any year the moneys collected under this  
28 section exceed the amount of interest due on the federal

1        advancements by less than one hundred thousand dollars, the  
2        balance shall be transferred from the special employment security  
3        fund to the Secretary of the Treasury of the United States to be  
4        credited to the account of this state in the unemployment trust  
5        fund.

6                3.    [In addition to all other contributions due under this  
7        chapter,] If the fund is utilizing moneys from the proceeds of  
8        credit instruments issued under section 288.330, or from the  
9        moneys advanced under financial agreements under subdivision (17)  
10       of subsection 2 of section 288.330, or a combination of credit  
11       instrument proceeds and moneys advanced under financial  
12       agreements each employer [shall] may be assessed a credit  
13       instrument and financing agreement repayment surcharge. The  
14       total of such surcharge shall be calculated as an amount up to  
15       one hundred fifty percent of the amount required in the  
16       twelve-month period following the due date for the payment of  
17       such surcharge for the payment of the principal, interest, and  
18       administrative expenses related to such credit instruments, or in  
19       the case of financial agreements for the payment of principal,  
20       interest, and administrative expenses related to such financial  
21       agreements, or in the case of a combination of credit instruments  
22       and financial agreements for the payment of principal, interest,  
23       and administrative expenses for both. The total annual surcharge  
24       to be collected shall be calculated by the division as a  
25       percentage of the total statewide contributions collected during  
26       the previous calendar year. Each employer's proportionate share  
27       shall be the product obtained by multiplying the [total statewide  
28       credit instrument and financing agreement repayment surcharge by

1 a number obtained by dividing the employer's total taxable wages  
2 for the prior year by the total taxable wages in the state for  
3 the prior year] percentage calculated under this subsection by  
4 each employer's contributions due under this chapter for each  
5 filing period during the preceding calendar year. Each employer  
6 shall be notified by the division of the amount due under this  
7 section by [(January)] April thirtieth of each year and such  
8 amount shall be considered delinquent thirty days thereafter.

9 288.175. 1. Notwithstanding any other provisions to the  
10 contrary, the division may collect any debt by interception of  
11 the debtor's federal income tax refund, in the manner and to the  
12 extent allowed by federal law.

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

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

21 4. The division may utilize collection agencies to collect  
22 any debt as defined in this section to the extent and manner  
23 allowed by federal law.

24 288.190. 1. The director shall designate an impartial  
25 referee or referees to hear and decide disputed determinations,  
26 claims referred pursuant to subsection 2 of section 288.070, and  
27 petitions for reassessment. No employee of the division shall  
28 participate on behalf of the division in any case in which the

1 division employee is an interested party.

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

25 3. Unless an appeal on a disputed determination or referred  
26 claim is withdrawn, an appeals tribunal, after affording the  
27 parties reasonable opportunity for fair hearing, shall affirm,  
28 modify, or reverse the determination of the deputy, or shall

1 remand the matter to the deputy with directions. In addition, in  
2 any case wherein the appellant, after having been duly notified  
3 of the date, time, and place of the hearing, shall fail to appear  
4 at such hearing, the appeals tribunal may enter an order  
5 dismissing the appeal. The director may transfer to another  
6 appeals tribunal the proceedings on an appeal determination  
7 before an appeals tribunal. The parties shall be duly notified  
8 of an appeals tribunal's decision or order, together with its  
9 reason therefor, which shall be deemed to be the final decision  
10 or order of the division unless, within thirty days after the  
11 date of notification or mailing of such decision, further appeal  
12 is initiated pursuant to section 288.200; except that, within  
13 thirty days of either notification or mailing of the appeals  
14 tribunal's decision or order, the appeals tribunal, on its own  
15 motion, or on motion of any party to the case, may reconsider any  
16 decision or order when it appears that such reconsideration is  
17 essential to the accomplishment of the object and purpose of this  
18 law. The authority of the appeals tribunal to reconsider any  
19 decision or order under this section shall continue throughout  
20 the thirty-day time limit, regardless of whether any party has  
21 initiated further appeal under section 288.200 during the thirty-  
22 day period.

23 4. Unless a petition for reassessment is withdrawn or is  
24 allowed without a hearing, the petitioners shall be given a  
25 reasonable opportunity for a fair hearing before an appeals  
26 tribunal upon each such petition. The appeals tribunal shall  
27 promptly notify the interested parties of its decision upon such  
28 petition together with its reason therefor. In addition, in any

1 case wherein the appellant, after having been duly notified of  
2 the date, time, and place of the hearing, shall fail to appear at  
3 such hearing, the appeals tribunal may enter an order dismissing  
4 the appeal. In the absence of the filing of an application for  
5 review of such decision, the decision, whether it results in a  
6 reassessment or otherwise, shall become final thirty days after  
7 the date of notification or mailing thereof; except that, within  
8 thirty days of either notification or mailing of the appeals  
9 tribunal's decision or order, the appeals tribunal, on its own  
10 motion, or on motion of any party to the case, may reconsider any  
11 decision or order when it appears that such reconsideration is  
12 essential to the accomplishment of the object and purposes of  
13 this law. The authority of the appeals tribunal to reconsider  
14 any decision under this section shall continue throughout the  
15 thirty-day time limit, regardless of whether any party has  
16 initiated further appeal under section 288.200 during that  
17 thirty-day period.

18 5. Any party subject to any decision of an appeals tribunal  
19 pursuant to this chapter has a right to counsel and shall be  
20 notified prior to a hearing conducted pursuant to this chapter  
21 that a decision of the appeals tribunal is presumptively  
22 conclusive for the purposes of this chapter as provided in  
23 section 288.200.

24 288.330. 1. Benefits shall be deemed to be due and payable  
25 only to the extent that moneys are available to the credit of the  
26 unemployment compensation fund and neither the state nor the  
27 division shall be liable for any amount in excess of such sums.  
28 The governor is authorized to apply for an advance to the state



1 unemployment fund and to accept the responsibility for the  
2 repayment of such advance in order to secure to this state and  
3 its citizens the advantages available under the provisions of  
4 federal law.

5 2. (1) The purpose of this subsection is to provide a  
6 method of providing funds for the payment of unemployment  
7 benefits or maintaining an adequate fund balance in the  
8 unemployment compensation fund, and as an alternative to  
9 borrowing or obtaining advances from the federal unemployment  
10 trust fund or for refinancing those loans or advances.

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

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

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

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

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

12           (c) In the event that any of the board members or officers  
13 of the board whose signatures or facsimile signatures appear on  
14 any credit instrument shall cease to be board members or officers  
15 before the delivery of such credit instrument, their signatures  
16 or facsimile signatures shall be valid and sufficient for all  
17 purposes as if such board members or officers had remained in  
18 office until delivery of such credit instrument.

19           (d) Neither the board members executing the credit  
20 instruments of the board nor any other board members shall be  
21 subject to any personal liability or accountability by reason of  
22 the issuance of the credit instruments.

23           (4) The board is authorized, by offering for public  
24 negotiated sale, to issue, sell, and deliver credit instruments,  
25 bearing interest at a fixed or variable rate as shall be  
26 determined by the board, which shall mature no later than [three]  
27 ten years after issuance, in the name of the board in an amount  
28 determined by the board [not to exceed a total of four hundred

1     fifty million dollars, less the principal amount of any financing  
2     agreement entered into under subdivision (17) of this  
3     subsection], provided that the unpaid principal amount of any  
4     outstanding credit instruments, combined with the unpaid  
5     principal amount of any financing agreement entered into under  
6     subdivision (17) of this subsection, shall not exceed four  
7     hundred fifty million dollars at any one time. Such credit  
8     instruments may be issued, sold, and delivered for the purposes  
9     set forth in subdivision (1) of this subsection. Such credit  
10    instrument may only be issued upon the approval of a resolution  
11    authorizing such issuance by a simple majority of the members of  
12    the board, with no other proceedings required. [No credit  
13    instrument may be outstanding hereunder after January 15, 2008.]

14       (5) The board shall provide for the payment of the  
15    principal of the credit instruments, any redemption premiums, the  
16    interest on the credit instruments, and the costs attributable to  
17    the credit instruments being issued or outstanding as provided in  
18    this chapter [subsection and in section 288.310]. Unless the  
19    board directs otherwise, the credit instrument shall be repaid in  
20    the same time frame and in the same amounts as would be required  
21    for loans issued pursuant to 42 U.S.C. Section 1321; however, in  
22    no case shall credit instruments be outstanding for more than  
23    [three] ten years [and further provided that no credit  
24    instruments shall be outstanding hereunder after January 15,  
25    2008].

26       (6) The board may irrevocably pledge money received from  
27    the credit instrument and financing agreement repayment surcharge  
28    under subsection 3 of section 288.128, and other money legally

1 available to it, which is deposited in an account [created]  
2 authorized for credit instrument repayment in the special  
3 employment security fund, provided that the general assembly has  
4 first appropriated moneys received from such surcharge and other  
5 moneys deposited in such account for the payment of credit  
6 instruments.

7 (7) Credit instruments issued under this section shall not  
8 constitute debts of this state or of the board or any agency,  
9 political corporation, or political subdivision of this state and  
10 are not a pledge of the faith and credit of this state, the board  
11 or of any of those governmental entities and shall not constitute  
12 an indebtedness within the meaning of any constitutional or  
13 statutory limitation upon the incurring of indebtedness. The  
14 credit instruments are payable only from revenue provided for  
15 under this chapter. The credit instruments shall contain a  
16 statement to the effect that:

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

21 (b) Neither the full faith and credit nor the taxing power  
22 of the state nor the board nor any agency, political corporation,  
23 or political subdivision of the state is pledged to the payment  
24 of the principal, premium, if any, or interest on the credit  
25 instruments.

26 (8) The board pledges and agrees with the owners of any  
27 credit instruments issued under this section that the state will  
28 not limit or alter the rights vested in the board to fulfill the

1 terms of any agreements made with the owners or in any way impair  
2 the rights and remedies of the owners until the credit  
3 instruments are fully discharged.

4 (9) The board may prescribe the form, details, and  
5 incidents of the credit instruments and make such covenants that  
6 in its judgment are advisable or necessary to properly secure the  
7 payment thereof. If such credit instruments shall be  
8 authenticated by the bank or trust company acting as registrar  
9 for such by the manual signature of a duly authorized officer or  
10 employee thereof, the duly authorized officers of the board  
11 executing and attesting such credit instruments may all do so by  
12 facsimile signature provided such signatures have been duly filed  
13 as provided in the uniform facsimile signature of public  
14 officials law, sections 105.273 to 105.278, RSMo, when duly  
15 authorized by resolution of the board, and the provisions of  
16 section 108.175, RSMo, shall not apply to such credit  
17 instruments. The board may provide for the flow of funds and the  
18 establishment and maintenance of separate accounts within the  
19 special employment security fund, including the interest and  
20 sinking account, the reserve account, and other necessary  
21 accounts, and may make additional covenants with respect to the  
22 credit instruments in the documents authorizing the issuance of  
23 credit instruments including refunding credit instruments. The  
24 resolutions authorizing the issuance of credit instruments may  
25 also prohibit the further issuance of credit instruments or other  
26 obligations payable from appropriated moneys or may reserve the  
27 right to issue additional credit instruments to be payable from  
28 appropriated moneys on a parity with or subordinate to the lien

1 and pledge in support of the credit instruments being issued and  
2 may contain other provisions and covenants as determined by the  
3 board, provided that any terms, provisions or covenants provided  
4 in any resolution of the board shall not be inconsistent with the  
5 provisions of this section.

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

14 (11) The credit instruments issued by the board, any  
15 transaction relating to the credit instruments, and profits made  
16 from the sale of the credit instruments are free from taxation by  
17 the state or by any municipality, court, special district, or  
18 other political subdivision of the state.

19 (12) As determined necessary by the board the proceeds of  
20 the credit instruments less the cost of issuance shall be placed  
21 in the state's unemployment compensation fund and may be used for  
22 the purposes for which that fund may otherwise be used. If those  
23 net proceeds are not placed immediately in the unemployment  
24 compensation fund they shall be held in the special employment  
25 security fund in an account designated for that purpose until  
26 they are transferred to the unemployment compensation fund  
27 provided that the proceeds of refunding credit instruments may be  
28 placed in an escrow account or such other account or instrument

1 as determined necessary by the board.

2 (13) The board may enter into any contract or agreement  
3 deemed necessary or desirable to effectuate cost-effective  
4 financing hereunder. Such agreements may include credit  
5 enhancement, credit support, or interest rate agreements  
6 including, but not limited to, arrangements such as municipal  
7 bond insurance; surety bonds; tax anticipation notes; liquidity  
8 facilities; forward agreements; tender agreements; remarketing  
9 agreements; option agreements; interest rate swap, exchange, cap,  
10 lock or floor agreements; letters of credit; and purchase  
11 agreements. Any fees or costs associated with such agreements  
12 shall be deemed administrative expenses for the purposes of  
13 calculating the credit instrument and financing agreement  
14 repayment surcharge under subsection 3 of section 288.128. The  
15 board, with consideration of all other costs being equal, shall  
16 give preference to Missouri-headquartered financial institutions,  
17 or those out-of-state-based financial institutions with at least  
18 one hundred Missouri employees.

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

22 (15) If the United States Secretary of Labor holds that a  
23 provision of this subsection or of any provision related to the  
24 levy or use of the credit instrument and financial agreement  
25 repayment surcharge does not conform with a federal statute or  
26 would result in the loss to the state of any federal funds  
27 otherwise available to it the board, in cooperation with the  
28 department of labor and industrial relations, may administer this

1 subsection, and other provisions related to the credit instrument  
2 and financial agreement repayment surcharge, to conform with the  
3 federal statute until the general assembly meets in its next  
4 regular session and has an opportunity to amend this subsection  
5 or other sections, as applicable.

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

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

12 (b) The board is authorized to enter financial agreements  
13 with any lender for the purposes set forth in subdivision (1) of  
14 this subsection, or to refinance other financial agreements in  
15 whole or in part, upon the approval of the simple majority of the  
16 members of the board of a resolution authorizing such financial  
17 agreements, with no other proceedings required. The total amount  
18 of the outstanding obligation under all such agreements at any  
19 one time shall not exceed the difference of four hundred fifty  
20 million dollars and the principal amount of credit instruments  
21 ~~[issued]~~ outstanding under this subsection. In no instance shall  
22 the outstanding obligation under any financial agreement continue  
23 for more than ~~[three]~~ ten years[, and no such financial  
24 agreement, whether entered into for refinancing purposes or  
25 otherwise, shall be outstanding after January 15, 2008].  
26 Repayment of obligations to lenders shall be made from the  
27 special employment security fund, section 288.310, subject to  
28 appropriation by the general assembly.



1           (c) Financial agreements entered into under this  
2 subdivision shall not constitute debts of this state or of the  
3 board or any agency, political corporation, or political  
4 subdivision of this state and are not a pledge of the faith and  
5 credit of this state, the board or of any of those governmental  
6 entities and shall not constitute an indebtedness within the  
7 meaning of any constitutional or statutory limitation upon the  
8 incurring of indebtedness. The financial agreements are payable  
9 only from revenue provided for under this chapter. The financial  
10 agreements shall contain a statement to the effect that:

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

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

20           (d) Neither the board members executing the financial  
21 agreements nor any other board members shall be subject to any  
22 personal liability or accountability by reason of the execution  
23 of such financial agreements.

24           (e) The board may prescribe the form, details and incidents  
25 of the financing agreements and make such covenants that in its  
26 judgment are advisable or necessary to properly secure the  
27 payment thereof provided that any terms, provisions or covenants  
28 provided in any such financing agreement shall not be

1 inconsistent with the provisions of this section. If such  
2 financing agreements shall be authenticated by the bank or trust  
3 company acting as registrar for such by the manual signature of a  
4 duly authorized officer or employee thereof, the duly authorized  
5 officers of the board executing and attesting such financing  
6 agreements may all do so by facsimile signature provided such  
7 signatures have been duly filed as provided in the uniform  
8 facsimile signature of public officials law, sections 105.273 to  
9 105.278, RSMo, when duly authorized by resolution of the board  
10 and the provisions of section 108.175, RSMo, shall not apply to  
11 such financing agreements.

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

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

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

1           4. For purposes of this section, as contained in senate  
2 substitute no. 2 for senate committee substitute for house  
3 substitute for house committee substitute for house bill nos.  
4 1268 and 1211, ninety-second general assembly, second regular  
5 session, the revisor of statutes shall renumber subdivision (16)  
6 of subsection 2 of such section as subdivision (17) of such  
7 subsection and renumber subdivision (17) of subsection 2 of such  
8 section as subdivision (16) of such subsection.

9           288.380. 1. Any agreement by a worker to waive, release,  
10 or commute such worker's rights to benefits or any other rights  
11 pursuant to this chapter or pursuant to an employment security  
12 law of any other state or of the federal government shall be  
13 void. Any agreement by a worker to pay all or any portion of any  
14 contributions required shall be void. No employer shall directly  
15 or indirectly make any deduction from wages to finance the  
16 employer's contributions required from him or her, or accept any  
17 waiver of any right pursuant to this chapter by any individual in  
18 his or her employ.

19           2. No employing unit or any agent of an employing unit or  
20 any other person shall make a false statement or representation  
21 knowing it to be false, nor shall knowingly fail to disclose a  
22 material fact to prevent or reduce the payment of benefits to any  
23 individual, nor to avoid becoming or remaining an employer, nor  
24 to avoid or reduce any contribution or other payment required  
25 from any employing unit, nor shall willfully fail or refuse to  
26 make any contributions or payments nor to furnish any required  
27 reports nor to produce or permit the inspection or copying of  
28 required records. Each such requirement shall apply regardless

1 of whether it is a requirement of this chapter, of an employment  
2 security law of any other state or of the federal government.

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

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

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

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

27 7. Any person who shall willfully violate any provision of  
28 this chapter, or of an employment security law of any other state

1 or of the federal government or any rule or regulation, the  
2 observance of which is required under the terms of any one of  
3 such laws, shall upon conviction be deemed guilty of a  
4 misdemeanor and shall be punished by a fine of not less than  
5 fifty dollars nor more than one thousand dollars, or by  
6 imprisonment in the county jail for not more than six months, or  
7 by both such fine and imprisonment, and each such violation or  
8 each day such violation continues shall be deemed to be a  
9 separate offense.

10 8. In case of contumacy by, or refusal to obey a subpoena  
11 issued to, any person, any court of this state within the  
12 jurisdiction of which the inquiry is carried on, or within the  
13 jurisdiction of which the person guilty of contumacy or refusal  
14 to obey is found or resides or transacts business, upon  
15 application by the director, the commission, an appeals tribunal,  
16 or any duly authorized representative of any one of them shall  
17 have jurisdiction to issue to such person an order requiring such  
18 person to appear before the director, the commission, an appeals  
19 tribunal or any duly authorized representative of any one of  
20 them, there to produce evidence if so ordered or there to give  
21 testimony touching the matter under investigation or in question;  
22 and any failure to obey such order of the court may be punished  
23 by the court as a contempt thereof.

24 9. (1) Any individual or employer who receives or denies  
25 unemployment benefits by intentionally misrepresenting,  
26 misstating, or failing to disclose any material fact has  
27 committed fraud. After the discovery of facts indicating fraud,  
28 a deputy shall make a written determination that the individual

1       obtained or denied unemployment benefits by fraud and that the  
2       individual must promptly repay the unemployment benefits to the  
3       fund. In addition, the deputy shall assess a penalty equal to  
4       twenty-five percent of the amount fraudulently obtained or  
5       denied. If division records indicate that the individual or  
6       employer had a prior established overpayment or record of denial  
7       due to fraud, the deputy shall, on the present overpayment or  
8       determination, assess a penalty equal to one hundred percent of  
9       the amount fraudulently obtained.

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

16       (3) If the individual or employer fails to repay the  
17       unemployment benefits and penalty, assessed as a result of the  
18       deputy's determination that the individual or employer obtained  
19       or denied unemployment benefits by fraud, such sum shall be  
20       collectible in the manner provided in sections 288.160 and  
21       288.170 for the collection of past due contributions. If the  
22       individual or employer fails to repay the unemployment benefits  
23       that the individual or employer denied or obtained by fraud, the  
24       division may offset from any future unemployment benefits  
25       otherwise payable the amount of the overpayment, or may take such  
26       steps as are necessary to effect payment from the individual or  
27       employer. Future benefits may not be used to offset the penalty  
28       due. Money received in repayment of fraudulently obtained or

1 denied unemployment benefits and penalties shall first be applied  
2 to the unemployment benefits overpaid, then to the penalty amount  
3 due. Payments made toward the penalty amount due shall be  
4 credited to the special employment security fund.

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

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

10 10. An individual who willfully fails to disclose amounts  
11 earned during any week with respect to which benefits are claimed  
12 by him or her, willfully fails to disclose or has falsified as to  
13 any fact which would have disqualified him or her or rendered him  
14 or her ineligible for benefits during such week, or willfully  
15 fails to disclose a material fact or makes a false statement or  
16 representation in order to obtain or increase any benefit  
17 pursuant to this chapter shall forfeit all of his or her benefit  
18 rights, and all of his or her wage credits accrued prior to the  
19 date of such failure to disclose or falsification shall be  
20 canceled, and any benefits which might otherwise have become  
21 payable to him or her subsequent to such date based upon such  
22 wage credits shall be forfeited; except that, the division may,  
23 upon good cause shown, modify such reduction of benefits and  
24 cancellation of wage credits. It shall be presumed that such  
25 failure or falsification was willful in any case in which an  
26 individual signs and certifies a claim for benefits and fails to  
27 disclose or falsifies as to any fact relative to such claim.

28 11. (1) Any assignment, pledge, or encumbrance of any

1 rights to benefits which are or may become due or payable  
2 pursuant to this chapter shall be void; and such rights to  
3 benefits shall be exempt from levy, execution, attachment, or any  
4 other remedy whatsoever provided for the collection of debt; and  
5 benefits received by any individual, so long as they are not  
6 mingled with other funds of the recipient, shall be exempt from  
7 any remedy whatsoever for the collection of all debts except  
8 debts incurred for necessities furnished to such individual or  
9 the individual's spouse or dependents during the time such  
10 individual was unemployed. Any waiver of any exemption provided  
11 for in this subsection shall be void; except that this section  
12 shall not apply to:

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

18 (b) Uncollected overissuances (as defined in Section  
19 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons;

20 (2) (a) An individual filing a new claim for unemployment  
21 compensation shall, at the time of filing such claim, disclose  
22 whether or not the individual owes support obligations, as  
23 defined pursuant to paragraph (g) of this subdivision or owes  
24 uncollected overissuances of food stamp coupons (as defined in  
25 Section 13(c)(1) of the Food Stamp Act of 1977). If any such  
26 individual discloses that he or she owes support obligations or  
27 uncollected overissuances of food stamp coupons, and is  
28 determined to be eligible for unemployment compensation, the



1 division shall notify the state or local support enforcement  
2 agency enforcing the support obligation or the state food stamp  
3 agency to which the uncollected food stamp overissuance is owed  
4 that such individual has been determined to be eligible for  
5 unemployment compensation;

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

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

14 b. The amount, if any, determined pursuant to an agreement  
15 submitted to the division pursuant to Section 454(20)(B)(I) of  
16 the Social Security Act by the state or local support enforcement  
17 agency, unless subparagraph c. of this paragraph is applicable;  
18 or the amount (if any) determined pursuant to an agreement  
19 submitted to the state food stamp agency pursuant to Section  
20 13(c)(3)(a) of the Food Stamp Act of 1977; or

21 c. Any amount otherwise required to be so deducted and  
22 withheld from such unemployment compensation pursuant to properly  
23 served legal process, as that term is defined in Section 459(I)  
24 of the Social Security Act; or any amount otherwise required to  
25 be deducted and withheld from the unemployment compensation  
26 pursuant to Section 13(c)(3)(b) of the Food Stamp Act of 1977;

27 (c) Any amount deducted and withheld pursuant to paragraph  
28 (b) of this subdivision shall be paid by the division to the

1 appropriate state or local support enforcement agency or state  
2 food stamp agency;

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

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

17 (f) Deductions will be made pursuant to this section only  
18 if appropriate arrangements have been made for reimbursement by  
19 the state or local support enforcement agency, or the state food  
20 stamp agency, for the administrative costs incurred by the  
21 division pursuant to this section which are attributable to  
22 support obligations being enforced by the state or local support  
23 enforcement agency or which are attributable to uncollected  
24 overissuances of food stamp coupons;

25 (g) The term "support obligations" is defined for purposes  
26 of this subsection as including only obligations which are being  
27 enforced pursuant to a plan described in Section 454 of the  
28 Social Security Act which has been approved by the Secretary of

1 Health and Human Services pursuant to Part D of Title IV of the  
2 Social Security Act;

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

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

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

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

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

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

1 child support obligations owed by the individual;

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

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

22 13. Any person who, by reason of any error or omission or  
23 because of a lack of knowledge of material fact on the part of  
24 the division, has received any sum of benefits pursuant to this  
25 chapter while any conditions for the receipt of benefits imposed  
26 by this chapter were not fulfilled in such person's case, or  
27 while such person was disqualified from receiving benefits, shall  
28 after an opportunity for a fair hearing pursuant to subsection 2

1 of section 288.190 have such sums deducted from any further  
2 benefits payable to such person pursuant to this chapter,  
3 provided that the division may elect not to process such possible  
4 overpayments where the amount of same is not over twenty percent  
5 of the maximum state weekly benefit amount in effect at the time  
6 the error or omission was discovered. [Recovering overpaid  
7 unemployment compensation benefits which are a result of error or  
8 omission on the part of the claimant shall be pursued by the  
9 division through billing and setoffs against state income tax  
10 refunds.]

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

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

1           288.381. 1. The provisions of subsection 6 of section  
2           288.070 notwithstanding, benefits paid to a claimant pursuant to  
3           subsection 5 of section 288.070 to which the claimant was not  
4           entitled based on a subsequent determination, redetermination or  
5           decision which has become final, shall be collectible by the  
6           division as provided in subsections [11 and] 12 and 13 of section  
7           288.380.

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

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

26          4. Any individual, company, association, corporation,  
27          partnership, bureau, agency or the agent or employee of the  
28          foregoing who interferes with, obstructs, or otherwise causes an

1 employer to fail to comply with the provisions of subsection 2 of  
2 this section shall be liable for damages in the amount of three  
3 times the amount owed by the employer to the division. The  
4 division shall proceed to collect such damages under the  
5 provisions of sections 288.160 and 288.170.

6 288.500. 1. There is created under this section a  
7 voluntary "Shared Work Unemployment Compensation Program". In  
8 connection therewith, the division may adopt rules and establish  
9 procedures, not inconsistent with this section, which are  
10 necessary to administer this program.

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

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

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

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

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

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

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

28 (7) "Shared work benefit", an unemployment compensation

1 benefit that is payable to an individual in an affected unit  
2 because the individual works reduced hours under an approved  
3 shared work plan;

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

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

14 3. An employer who wishes to participate in the shared work  
15 unemployment compensation program established under this section  
16 shall submit a written shared work plan in a form acceptable to  
17 the division for approval. As a condition for approval by the  
18 division, a participating employer shall agree to furnish the  
19 division with reports relating to the operation of the shared  
20 work plan as requested by the division. The employer shall  
21 monitor and evaluate the operation of the established shared work  
22 plan as requested by the division and shall report the findings  
23 to the division.

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

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

28 (2) The shared work plan applies to and identifies a



1 specified affected unit;

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

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

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

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

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

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

21 6. No shared work plan which will subsidize seasonal  
22 employers during the off-season or subsidize employers, at least  
23 fifty percent of the employees of which have normal weekly hours  
24 of work equaling thirty-two hours or less, shall be approved by  
25 the division. No shared work plan benefits will be initiated  
26 [for pay periods] when the reduced hours [reflect] coincide with  
27 holiday earnings already committed to be paid by the employer.  
28 Shared work-plan benefits may not be denied in any week

1     containing a holiday for which holiday earnings are committed to  
2     be paid by the employer unless the shared work benefits to be  
3     paid are for the same hours in the same day as the holiday  
4     earnings.

5           7. The division shall approve or deny a shared work plan  
6     not later than the thirtieth day after the day on which the  
7     shared work plan is received by the division. The division shall  
8     approve or deny a plan in writing. If the division denies a  
9     plan, the division shall notify the employer of the reasons for  
10    the denial. Approval or denial of a plan by the division shall  
11    be final and such determination shall be subject to review in the  
12    manner otherwise provided by law. If approval of a plan is  
13    denied by the division, the employer may submit a new plan to the  
14    division for consideration no sooner than forty-five calendar  
15    days following the date on which the division disapproved the  
16    employer's previously submitted plan.

17          8. The division may revoke approval of a shared work plan  
18    and terminate the plan if it determines that the shared work plan  
19    is not being executed according to the terms and intent of the  
20    shared work unemployment compensation program, or if it is  
21    determined by the division that the approval of the shared work  
22    plan was based, in whole or in part, upon information contained  
23    in the plan which was either false or substantially misleading.

24          9. Each shared work plan approved by the division shall  
25    become effective on the first day of the week in which it is  
26    approved by the division or on a later date as specified in the  
27    shared work plan. Each shared work plan approved by the division  
28    shall expire on the last day of the twelfth full calendar month

1 after the effective date of such shared work plan.

2 10. An employer may modify a shared work plan created under  
3 this section to meet changed conditions if the modification  
4 conforms to the basic provisions of the shared work plan as  
5 originally approved by the division. The employer shall report  
6 the changes made to the plan in writing to the division at least  
7 seven days before implementing such changes. The division shall  
8 reevaluate the shared work plan and may approve the modified  
9 shared work plan if it meets the requirements for approval under  
10 subsection 4 of this section. The approval of a modified shared  
11 work plan shall not, under any circumstances, affect the  
12 expiration date originally set for the shared work plan. If  
13 modifications cause the shared work plan to fail to meet the  
14 requirements for approval, the division shall deny approval of  
15 the modifications as provided in subsection 7 of this section.

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

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

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

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

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

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

10          13. A waiting week served under the provisions of  
11 subdivision (3) of subsection 1 of section 288.040 shall serve to  
12 meet the requirements of subdivision (4) of subsection 12 of this  
13 section and a waiting week served under the provisions of  
14 subdivision (4) of subsection 12 of this section shall serve to  
15 meet the requirements of section 288.040. Notwithstanding any  
16 other provisions of this chapter, an individual who files a new  
17 initial claim during the pendency of the twelve-month period in  
18 which a shared work plan is in effect shall serve a waiting week  
19 whether or not the individual has served a waiting week under  
20 this subsection.

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

27          15. The division shall pay an individual who is eligible  
28 for shared work benefits under this section a weekly shared work

1 benefit amount equal to the individual's regular weekly benefit  
2 amount for a period of total unemployment less any deductible  
3 amounts under this chapter except wages received from any  
4 employer, multiplied by the full percentage of reduction in the  
5 individual's hours as set forth in the employer's shared work  
6 plan. If the shared work benefit amount calculated under this  
7 subsection is not a multiple of one dollar, the division shall  
8 round the amount so calculated to the next lowest multiple of one  
9 dollar. An individual shall be ineligible for shared work  
10 benefits for any week in which the individual performs paid work  
11 for the participating employer in excess of the reduced hours  
12 established under the shared work plan.

13 16. An individual shall not be entitled to receive shared  
14 work benefits and regular unemployment compensation benefits in  
15 an aggregate amount which exceeds the maximum total amount of  
16 benefits payable to that individual in a benefit year as provided  
17 under section 288.038. Notwithstanding any other provisions of  
18 this chapter, an individual shall not be eligible to receive  
19 shared work benefits for more than twenty-six calendar weeks  
20 during the twelve-month period of the shared work plan. No week  
21 shall be counted as a week of unemployment for the purposes of  
22 this subsection unless it occurs within the twelve-month period  
23 of the shared work plan.

24 17. Notwithstanding any other provision of this chapter,  
25 all benefits paid under a shared work plan which are chargeable  
26 to the participating employer or any other base period employer  
27 of a participating employee shall be charged to the account of  
28 the participating employer under the plan.

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

6           290.595. 1. As used in this section, the term "proper  
7 authorities" shall mean public authorities or authorities of the  
8 employer, but shall not include any individual who engaged in the  
9 reported illegal conduct.

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

15          (1) The employee reported to a proper authority conduct  
16 that the employee had a good faith and reasonable belief violated  
17 a clearly mandated public policy as expressed in a statute,  
18 constitutional provision, or regulation;

19          (2) The employee was discharged; and

20          (3) The employee's report to a proper authority was the  
21 determining factor in the discharge.

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

28          (1) The employer directed the employee to perform conduct

1 that the employee had a good faith and reasonable belief would,  
2 if completed, violate a clearly mandated public policy as  
3 expressed in a statute, constitutional provision, or regulation;

4 (2) The employee refused to perform the act;

5 (3) The employee was discharged; and

6 (4) The employee's refusal to perform the act was the  
7 determining factor in the discharge.

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

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