

SECOND REGULAR SESSION

# HOUSE BILL NO. 2362

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE JONES (89).

Read 1st time March 6, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4665L.02I

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### AN ACT

To repeal sections 288.030, 288.040, 288.042, 288.070, 288.190, and 288.381, RSMo, and to enact in lieu thereof six new sections relating to unemployment compensation, with 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Section A. Sections 288.030, 288.040, 288.042, 288.070, 288.190, and 288.381, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 288.030, 288.040, 288.042, 288.070, 288.190, and 288.381, to read as follows:

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

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

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

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

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

- 13           (4) "Benefits", the money payments payable to an insured worker, as provided in this  
14 chapter, with respect to such insured worker's unemployment;
- 15           (5) "Calendar quarter", the period of three consecutive calendar months ending on March  
16 thirty-first, June thirtieth, September thirtieth, or December thirty-first;
- 17           (6) "Claimant", an individual who has filed an initial claim for determination of such  
18 individual's status as an insured worker, a notice of unemployment, a certification for waiting  
19 week credit, or a claim for benefits;
- 20           (7) "Commission", the labor and industrial relations commission of Missouri;
- 21           (8) "Common paymaster", two or more related corporations in which one of the  
22 corporations has been designated to disburse remuneration to concurrently employed individuals  
23 of any of the related corporations;
- 24           (9) "Contributions", the money payments to the unemployment compensation fund  
25 required by this chapter, exclusive of interest and penalties;
- 26           (10) "Decision", a ruling made by an appeals tribunal or the commission after a hearing;
- 27           (11) "Deputy", a representative of the division designated to make investigations and  
28 administrative determinations on claims or matters of employer liability or to perform related  
29 work;
- 30           (12) "Determination", any administrative ruling made by the division without a hearing;
- 31           (13) "Director", the administrative head of the division of employment security;
- 32           (14) "Division", the division of employment security which administers this chapter;
- 33           (15) "Employing unit", any individual, organization, partnership, corporation, common  
34 paymaster, or other legal entity, including the legal representatives thereof, which has or,  
35 subsequent to June 17, 1937, had in its employ one or more individuals performing services for  
36 it within this state. All individuals performing services within this state for any employing unit  
37 which maintains two or more separate establishments within this state shall be deemed to be  
38 employed by a single employing unit for all the purposes of this chapter. Each individual  
39 engaged to perform or to assist in performing the work of any person in the service of an  
40 employing unit shall be deemed to be engaged by such employing unit for all the purposes of this  
41 chapter, whether such individual was engaged or paid directly by such employing unit or by such  
42 person, provided the employing unit had actual or constructive knowledge of the work;
- 43           (16) "Employment office", a free public employment office operated by this or any other  
44 state as a part of a state controlled system of public employment offices including any location  
45 designated by the state as being a part of the one-stop career system;
- 46           (17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any  
47 combination of these and any other type of equipment used by authorized carriers in the  
48 transportation of property for hire;

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

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

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

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

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

68 (b) As to initial claims filed after December 31, 2004, wages for insured work in the  
69 amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand  
70 three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or  
71 more, after December 31, 2007, one thousand five hundred dollars or more in at least one  
72 calendar quarter of such worker's base period and total wages in the worker's base period equal  
73 to at least one and one-half times the insured wages in that calendar quarter of the base period  
74 in which the worker's insured wages were the highest, or in the alternative, a worker who has  
75 been paid wages in at least two calendar quarters of such worker's base period and whose total  
76 base period wages are at least one and one-half times the maximum taxable wage base, taxable  
77 to any one employer, in accordance with subsection 2 of section 288.036;

78 (23) "Misconduct", an act of wanton or willful disregard of the employer's interest, a  
79 deliberate violation of the employer's rules, a disregard of standards of behavior which the  
80 employer has the right to expect of his or her employee, or negligence in such degree or  
81 recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and  
82 substantial disregard of the employer's interest or of the employee's duties and obligations to the  
83 employer;

84 (24) "Referee", a representative of the division designated to serve on an appeals  
85 tribunal;

86 (25) "State" includes, in addition to the states of the United States of America, the  
87 District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

88 (26) "Temporary employee", an employee assigned to work for the clients of a temporary  
89 help firm;

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

93 (28) (a) An individual shall be deemed "totally unemployed" in any week during which  
94 the individual performs no services and with respect to which no wages are payable to such  
95 individual;

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

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

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

110 (29) "Waiting week", the first week of unemployment for which a claim is allowed in  
111 a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date  
112 of a shared work plan, the first week of participation in a shared work unemployment  
113 compensation program pursuant to section 288.500.

114 2. The Missouri average annual wage shall be computed as of June thirtieth of each year,  
115 and shall be applicable to the following calendar year. The Missouri average annual wage shall  
116 be calculated by dividing the total wages reported as paid for insured work in the preceding  
117 calendar year by the average of mid-month employment reported by employers for the same  
118 calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri  
119 average annual wage as computed in this subsection by fifty-two.

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

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

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

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

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

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

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

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

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

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

34

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

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

46 (5) The claimant has made a claim for benefits **within fourteen days from the last day**  
47 **of the week being claimed. The fourteen-day period may, for good cause, be extended to**  
48 **twenty-eight days. Claims under the shared work program or the Federal Trade Act shall**  
49 **be considered timely filed if filed within twenty-eight days from the last day of the week**  
50 **being claimed;**

51 (6) **The claimant has reported to an employment office to participate in a**  
52 **reemployment assessment and reemployment services as directed by the deputy or**  
53 **designated staff of an employment office, unless the deputy determines that good cause**  
54 **exists for the claimant's failure to participate in such reemployment assessment and**  
55 **reemployment services. For purposes of this section, reemployment services may include**  
56 **but not be limited to the following:**

57 (a) **Providing an orientation to employment office services;**

58 (b) **Providing job search assistance; and**

59 (c) **Providing labor market statistics or analysis;**

60

61 **Ineligibility under this subdivision shall begin on the first day of the week which the**  
62 **claimant was scheduled to report for the reemployment assessment or reemployment**  
63 **services and shall end on the last day of the week preceding the week during which the**  
64 **claimant does report in person to the employment office for such reemployment assessment**  
65 **or reemployment services;**

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

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

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

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

77 3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of  
78 section 288.034, shall be payable in the same amount, on the same terms and subject to the same  
79 conditions as compensation payable on the basis of other service subject to this law; except that:

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

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

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

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

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

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

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

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

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

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

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



143           6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for  
144 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage  
145 of work which exists because of a labor dispute in the factory, establishment or other premises  
146 in which such claimant is or was last employed. In the event the claimant secures other  
147 employment from which he or she is separated during the existence of the labor dispute, the  
148 claimant must have obtained bona fide employment as a permanent employee for at least the  
149 major part of each of two weeks in such subsequent employment to terminate his or her  
150 ineligibility. If, in any case, separate branches of work which are commonly conducted as  
151 separate businesses at separate premises are conducted in separate departments of the same  
152 premises, each such department shall for the purposes of this subsection be deemed to be a  
153 separate factory, establishment or other premises. This subsection shall not apply if it is shown  
154 to the satisfaction of the deputy that:

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

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

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

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

174           8. Benefits shall not be payable on the basis of services performed by an alien, unless  
175 such alien is an individual who was lawfully admitted for permanent residence at the time such  
176 services were performed, was lawfully present for purposes of performing such services, or was  
177 permanently residing in the United States under color of law at the time such services were

178 performed (including an alien who was lawfully present in the United States as a result of the  
179 application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

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

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

186 9. The directors of the division of employment security and the division of workforce  
187 development shall submit to the governor, the speaker of the house of representatives, and the  
188 president pro tem of the senate no later than October 15, 2006, a report outlining their  
189 recommendations for how to improve work search verification and claimant reemployment  
190 activities. The recommendations shall include, but not limited to how to best utilize  
191 "greathires.org", and how to reduce the average duration of unemployment insurance claims.  
192 Each calendar year thereafter, the directors shall submit a report containing their  
193 recommendations on these issues by December thirty-first of each year.

288.042. 1. For purposes of this section, a "war on terror veteran" is a Missouri resident  
2 who serves or has served in the military and to whom the following criteria apply:

3 (1) The person is or was a member of the [Missouri] national guard or a member of a  
4 United States armed forces reserves unit who was officially domiciled in the state of Missouri  
5 immediately prior to deployment;

6 (2) The person was deployed as part of his or her military unit at any time after  
7 September 11, 2001, and such deployment caused the person to be unable to continue working  
8 for his or her employer;

9 (3) The person was employed either part time or full time before deployment; and

10 (4) A Missouri court or United States district court located in Missouri has found that  
11 the person was discharged from or laid off from his or her nonmilitary employment during  
12 deployment or within thirty days after the completion of his or her deployment.

13 2. Notwithstanding any provisions of sections 288.010 to 288.500, any war on terror  
14 veteran shall be entitled to receive veterans' unemployment compensation benefits under this  
15 section. A war on terror veteran shall be entitled to a weekly benefit amount of eight percent of  
16 the wages paid to the war on terror veteran during that calendar quarter during which the war on  
17 terror veteran earned the highest amount within the five completed calendar quarters during  
18 which the war on terror veteran received wages immediately before deployment. The maximum  
19 amount of a weekly benefit amount shall be one thousand one hundred fifty-three dollars and  
20 sixty-four cents.

21           3. A war on terror veteran shall be entitled to a weekly benefit amount for twenty-six  
22 weeks. [The division may collect erroneously paid benefits in the manner provided in sections  
23 288.160 and 288.170.] **The division of employment security shall pursue recovery of**  
24 **overpaid unemployment compensation benefits against any person receiving such overpaid**  
25 **benefits through billing, setoffs against state tax refunds, setoffs against federal tax refunds**  
26 **to the extent permitted by federal law, intercepts of lottery winnings under section 313.321,**  
27 **RSMo, and collection efforts as provided for in sections 288.160, 288.170, and 288.175.**

28           4. Any employer who is found in any Missouri court or United States district court  
29 located in Missouri to have terminated, demoted, or taken an adverse employment action against  
30 a war on terror veteran due to his or her absence while deployed shall be subject to an  
31 administrative penalty in the amount of thirty-five thousand dollars. The director of the division  
32 of employment security shall take judicial notice of judgments in suits brought under the  
33 Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. 4301). Such  
34 judgments may be considered to have a res judicata effect on the director's determination. The  
35 administrative penalty shall be collectible in the manner provided in sections 288.160 and  
36 288.170.

37           5. A war on terror veteran shall be considered to have been discharged from his or her  
38 employment if he or she is not offered the same wages, benefits, and similar work schedule upon  
39 his or her return after deployment.

40           6. There is hereby created in the state treasury the "War on Terror Unemployment  
41 Compensation Fund", which shall consist of money collected under this section and such other  
42 state funds appropriated by the general assembly. The state treasurer shall be custodian of the  
43 fund and shall approve disbursements from the fund in accordance with sections 30.170 and  
44 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the  
45 administration, including payment of benefits and refunds, of this section. Notwithstanding the  
46 provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the  
47 end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer  
48 shall invest moneys in the fund in the same manner as other funds are invested. Any interest and  
49 money earned on such investments shall be credited to the fund.

50           7. The division of employment security may promulgate rules to enforce this section.  
51 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created  
52 under the authority delegated in this section shall become effective only if it complies with and  
53 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
54 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested  
55 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date,  
56 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of

57 rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid  
58 and void.

288.070. 1. All claims shall be made in accordance with such regulations as the division  
2 may prescribe; except that such regulations shall not require the filing of a claim for benefits by  
3 the claimant in person for a week of unemployment occurring immediately prior to the claimant's  
4 reemployment, but claims in such cases may be made by mail, or otherwise if authorized by  
5 regulation. Notice of each initial claim filed by an insured worker which establishes the  
6 beginning of such worker's benefit year shall be promptly mailed by the division to each base  
7 period employer of such individual, **except notice of an initial claim shall not be mailed to any**  
8 **contributing base period employer which paid such individual gross wages in the amount**  
9 **of four hundred dollars or less during such individual's base period**, and to the last  
10 employing unit whose name is furnished by the individual when such individual files such claim.  
11 In similar manner, a notice of each renewed claim filed by an insured worker during a benefit  
12 year after a period in such year during which the insured worker was employed shall be given  
13 to the last employing unit whose name is furnished by the individual when the individual files  
14 such renewed claim or to any other base period or subsequent employer of the worker who has  
15 requested such a notice. Any such base period employer or any employing unit, which employed  
16 the claimant since the beginning of the base period, who within ten calendar days after the  
17 mailing of notice of the initial claim or a renewed claim to the employer or employing unit's last  
18 known address files a written protest against the allowance of benefits, and any employing unit  
19 from whom the claimant was separated during a week [of continued claim] **claimed** other than  
20 a week in which an initial or renewed claim is effective, shall be deemed an interested party to  
21 any determination allowing benefits during the benefit year until such time as the issue or issues  
22 raised by the protest are resolved by a determination or decision which has become final.

23 2. **If the last employer or any base period employer files a written protest against**  
24 **the allowance of benefits based upon the claimant's refusal to accept suitable work when**  
25 **offered to the claimant, either through the division or directly by such last or base period**  
26 **employer, and such protest is filed within ten calendar days of the claimant's refusal of**  
27 **work, such employer shall be deemed an interested party to any determination concerning**  
28 **the claimant's refusal of work until such time as the issue or issues raised by the protest are**  
29 **resolved by a determination or decision which has become final.**

30 3. **Any base period employer or employing unit which employed the claimant since**  
31 **the beginning of the base period who files a written protest against the allowance of**  
32 **benefits based upon the claimant not being able to work or available for work shall be**  
33 **deemed an interested party to any determination concerning the claimant's ability to work**

34 **or availability for work until such time as the issue or issues raised by the protest are**  
35 **resolved by a determination or decision which has become final.**

36 **4.** A deputy shall promptly examine each initial claim and make a determination of the  
37 claimant's status as an insured worker. Each such determination shall be based on a written  
38 statement showing the amount of wages for insured work paid to the claimant by each employer  
39 during the claimant's base period and shall include a finding as to whether such wages meet the  
40 requirements for the claimant to be an insured worker, and, if so, the first day of the claimant's  
41 benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits  
42 which may be payable to the claimant for weeks of unemployment in the claimant's benefit year.  
43 The deputy shall in respect to all claims for benefits thereafter filed by such individual in the  
44 claimant's benefit year make a written determination as to whether and in what amount the  
45 claimant is entitled to benefits for the week or weeks with respect to which the determination is  
46 made. Whenever claims involve complex questions of law or fact, the deputy, with the approval  
47 of the director, may refer such claims to the appeals tribunal, without making a determination,  
48 for a fair hearing and decision as provided in section 288.190.

49 **[3.] 5.** The deputy shall, in writing, promptly notify the claimant of such deputy's  
50 determination on an initial claim, including the reason therefor, and a copy of the written  
51 statement as provided in subsection **[2] 4** of this section. The deputy shall promptly notify the  
52 claimant and all other interested parties of such deputy's determination on any claim for benefits  
53 and shall give the reason therefor; except that, where a determination on a later claim for benefits  
54 in a benefit year is the same as the determination on a preceding claim, no additional notice shall  
55 be given. A determination shall be final, when unappealed, in respect to any claim to which it  
56 applies except that an appeal from a determination on a claim for benefits shall be considered  
57 as an appeal from all later claims to which the same determination applies. The deputy may,  
58 however, not later than one year following the end of a benefit year, for good cause, reconsider  
59 any determination on any claim and shall promptly notify the claimant and other interested  
60 parties of such deputy's redetermination and the reasons therefor. Whenever the deputy shall  
61 have notified any interested employer of the denial of benefits to a claimant for any week or  
62 weeks and shall thereafter allow benefits to such claimant for a subsequent week or weeks, the  
63 deputy shall notify such interested employer of the beginning date of the allowance of benefits  
64 for such subsequent period.

65 **[4.] 6.** Unless the claimant or any interested party within thirty calendar days after notice  
66 of such determination is either delivered in person or mailed to the last known address of such  
67 claimant or interested party files an appeal from such determination, it shall be final. If, pursuant  
68 to a determination or redetermination, benefits are payable in any amount or in respect to any

69 week as to which there is no dispute, such amount of benefits shall be promptly paid regardless  
70 of any appeal.

71 [5.] 7. Benefits shall be paid promptly in accordance with a determination or  
72 redetermination pursuant to this section, or the decision of an appeals tribunal, the labor and  
73 industrial relations commission of Missouri or a reviewing court upon the issuance of such  
74 determination, redetermination or decision (regardless of the pendency of the period to apply for  
75 reconsideration, file an appeal, or petition for judicial review as provided in this section, or  
76 section 288.190, 288.200, or 288.210, as the case may be, or the pendency of any such  
77 application, appeal, or petition) unless and until such determination, redetermination or decision  
78 has been modified or reversed by a subsequent redetermination or decision, in which event  
79 benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such  
80 modified or reversed redetermination or decision.

81 [6.] 8. Benefits paid during the pendency of the period to apply for reconsideration, file  
82 an appeal, or petition for judicial review or during the pendency of any such application, appeal,  
83 or petition shall be considered as having been due and payable regardless of any redetermination  
84 or decision unless the modifying or reversing redetermination or decision establishes that the  
85 claimant willfully failed to disclose or falsified any fact which would have disqualified the  
86 claimant or rendered the claimant ineligible for such benefits as contemplated in subsection 9  
87 of section 288.380.

88 [7.] 9. Benefits paid during the pendency of the period to apply for reconsideration, file  
89 an appeal, or petition for judicial review or during the pendency of any such application, appeal,  
90 or petition which would not have been payable under a redetermination or decision which  
91 becomes final shall not be chargeable to any employer. Beginning with benefits paid on and  
92 after January 1, 1998, the provisions of this subsection shall not apply to employers who have  
93 elected to make payments in lieu of contributions pursuant to subsection 3 of section 288.090.

94 [8.] 10. The ten-day period mentioned in [subsection] **subsections 1 and 2** of this section  
95 and the thirty-day period mentioned in subsection [4] **6** of this section may, for good cause, be  
96 extended.

97 **11. Any notice of claim or notice of determination required to be mailed by the**  
98 **division to an employer or claimant under this section may be transmitted electronically**  
99 **by the division to any employer or claimant requesting such method of delivery. The date**  
100 **the division transmits such notice of claim or notice of determination shall be deemed the**  
101 **date of mailing for purposes of filing a protest to the notice of claim or filing an appeal**  
102 **concerning a notice of determination.**

288.190. 1. The director shall designate an impartial referee or referees to hear and  
2 decide disputed determinations, claims referred pursuant to subsection [2] **4** of section 288.070,

3 and petitions for reassessment. No employee of the division shall participate on behalf of the  
4 division in any case in which the division employee is an interested party.

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

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

37         4. Unless a petition for reassessment is withdrawn or is allowed without a hearing, the  
38 petitioners shall be given a reasonable opportunity for a fair hearing before an appeals tribunal

39 upon each such petition. The appeals tribunal shall promptly notify the interested parties of its  
40 decision upon such petition together with its reason therefor. In addition, in any case wherein  
41 the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail  
42 to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. In the  
43 absence of the filing of an application for review of such decision, the decision, whether it results  
44 in a reassessment or otherwise, shall become final thirty days after the date of notification or  
45 mailing thereof; except that, within thirty days of either notification or mailing of the appeals  
46 tribunal's decision or order, the appeals tribunal, on its own motion, or on motion of any party  
47 to the case, may reconsider any decision or order when it appears that such reconsideration is  
48 essential to the accomplishment of the object and purposes of this law. The authority of the  
49 appeals tribunal to reconsider any decision under this section shall continue throughout the  
50 thirty-day time limit, regardless of whether any party has initiated further appeal under section  
51 288.200 during that thirty-day period.

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

288.381. 1. The provisions of subsection [6] 8 of section 288.070 notwithstanding,  
2 benefits paid to a claimant pursuant to subsection [5] 7 of section 288.070 to which the claimant  
3 was not entitled based on a subsequent determination, redetermination or decision which has  
4 become final, shall be collectible by the division as provided in subsections 12 and 13 of section  
5 288.380.

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

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

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



20 employer to fail to comply with the provisions of subsection 2 of this section shall be liable for  
21 damages in the amount of three times the amount owed by the employer to the division. The  
22 division shall proceed to collect such damages under the provisions of sections 288.160 and  
23 288.170.

Section B. Section A of this act shall become effective on October 1, 2008.

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