

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute No. 2 for House Bill No. 698, Page 42, Section 135.1575,
2 Line 19, by inserting after all of said section and line the following:

3 "140.910. 1. In addition to any other remedy provided by law for the collection of
4 delinquent taxes due the state of Missouri, if the director has filed a certificate of lien in the circuit
5 court as provided by section 143.902, 144.380, or 144.690, the director or the director's designee
6 may issue an order directing any person to withhold and pay over to the department assets belonging
7 to, due, or to become due the taxpayer. The director or the director's designee shall not issue the
8 administrative garnishment if the taxpayer has entered into a written agreement with the department
9 for an alternative payment arrangement and the taxpayer is in compliance with the agreement.

10 2. An order entered under this section shall be served on the person either by regular mail or
11 by certified mail, return receipt requested, or may be issued through electronic means if the person
12 has provided prior written consent to such service, and shall be binding on the employer or other
13 payer on receipt. The person in possession of assets belonging to, due, or to become due the
14 taxpayer may deduct a sum not to exceed six dollars per month as reimbursement for costs, except
15 that the total amount withheld shall not exceed the limitations contained in the federal Consumer
16 Credit Protection Act, 15 U.S.C. Section 1673, as amended.

17 3. A copy of the order shall be mailed to the taxpayer at the taxpayer's last known address.
18 The notice shall advise the taxpayer that the administrative garnishment has commenced and the
19 procedures to contest such garnishment by requesting a hearing within thirty days from mailing or
20 electronic issuance of the notice. At such a hearing the certified records of the department shall
21 constitute prima facie evidence that the director's order is valid and enforceable. If a prima facie
22 case is established, the obligor may only assert as a defense mistake as to the identity of the taxpayer,
23 mistake as to payments made, or existence of an alternative payment agreement for which no default
24 has occurred. The taxpayer shall have the burden of proof on such issues. The taxpayer may obtain
25 relief from the garnishment by paying the amount owed.

26 4. An employer or other payer shall withhold from the earnings or other income of each
27 taxpayer the amount specified in the order. The employer or other payer shall transmit the payments
28 as directed in the order within ten business days of the date the earnings, money due, or other income
29 was payable to the taxpayer. For purposes of this section, "business day" means a day that state
30 offices are open for regular business. The employer or other payer shall, along with the amounts
31 transmitted, provide the date the amount was withheld from the taxpayer.

32 5. An order issued under subsection 1 of this section shall be a continuing order and shall
33 remain in effect and be binding upon any person to whom it is directed until a further order of the
34 director. The director shall notify such person to whom such an order has been directed whenever
35 the deficiency is paid in full.

36 6. If the order is served on a person other than an employer or other payer, it shall be a lien
37 against any money belonging to the taxpayer that is in the possession of the person on the date of

Action Taken _____ Date _____

1 service. The person other than an employer or other payer shall pay over any assets within ten
 2 business days of the service date of the order. A financial institution ordered to surrender an account
 3 shall be entitled to collect its normally scheduled account activity surcharges to maintain the account
 4 during the period of time the account is garnished. For purposes of this section, the interest of the
 5 taxpayer in any joint financial accounts shall be presumed to be equal to all other joint owners.

6 7. An order issued under subsection 1 of this section shall have priority over any other legal
 7 process under state law against the same income or other asset, except that where the other legal
 8 process is an order issued under section 452.350, 454.505, or 454.507, the withholding for child
 9 support shall have priority.

10 8. No person who complies with an order entered under this section shall be liable to the
 11 taxpayer, or to any other person claiming rights derived from the taxpayer, for wrongful withholding.
 12 A person who fails or refuses to withhold or pay the amounts as ordered under this section shall be
 13 liable to the state in a sum equal to the value of the wages or property not surrendered, but not to
 14 exceed the amount of tax deficiency. The director is hereby authorized to bring an action in circuit
 15 court to determine the liability of a person for failure to withhold or pay the amounts as ordered. If a
 16 court finds that a violation has occurred, the court may fine the person in an amount not to exceed
 17 five hundred dollars. The court may also enter a judgment against the person or other legal entity for
 18 the amounts not surrendered, court costs, and reasonable attorney's fees.

19 9. The remedy provided by this section shall be available where the state or any of its
 20 political subdivisions is the employer or other payer of the taxpayer in the same manner and to the
 21 same extent as where the employer or other payer is a private party.

22 10. An employer shall not discharge, or refuse to hire or otherwise discipline, an employee
 23 as a result of an order to withhold and pay over money authorized by this section. If any such
 24 employee is discharged within thirty days of the date upon which an order to withhold and pay over
 25 money is to take effect, there shall arise a rebuttable presumption that such discharge was a result of
 26 such order. This presumption shall be overcome only by clear, cogent, and convincing evidence
 27 produced by the employer that the employee was not terminated because of the order to withhold and
 28 pay over certain money. The director or the director's designee is hereby authorized to bring an
 29 action in circuit court to determine whether the discharge constitutes a violation of this subsection. If
 30 the court finds that a violation has occurred, the court may enter an order against the employer
 31 requiring reinstatement of the employee and may fine the employer in an amount not to exceed five
 32 hundred dollars. Further, the court may also enter judgment against the employer for the back
 33 wages, costs, attorney's fees, and for the amount of taxes that should have been withheld and paid
 34 over during the period of time the employee was wrongfully discharged.

35 11. If a taxpayer whose earnings or other income are subject to an order issued under
 36 subsection 1 of this section terminates the taxpayer's employment, the employer shall, within ten
 37 days of the termination, notify the department of the termination, shall provide to the department the
 38 last known address of the taxpayer, if known to the employer, and shall provide to the department the
 39 name and address of the taxpayer's new employer, if known. The director or the director's designee
 40 may issue an order to the new employer as provided in subsection 1 of this section.

41 12. For purposes of this section, "assets" include, but are not limited to, currency, any
 42 financial account or other liquid asset, and any income or other periodic form of payment due to a
 43 taxpayer regardless of source, including, but not limited to, wages, salaries, commissions, bonuses,
 44 workers' compensation benefits, disability benefits, payments pursuant to a pension or a retirement
 45 program, and interest.

46 143.902. 1. In any case in which any assessment of tax, interest, additions to tax or penalty
 47 imposed under sections 143.005 to 143.998 has been made and has become final, the director of
 48 revenue may file for record in the recorder's office of any county in which the taxpayer owing such

1 tax, interest, additions to tax or penalty resides, owns property or has a place of business, a certificate
2 of lien specifying the amount of the tax, interest, additions to tax or penalty due and the name of the
3 taxpayer liable for the same. Included in the notice of deficiency, the director shall notify the
4 taxpayer of the department's intent to file prior to the filing of such certificate. Such notification
5 shall contain a summary of the taxpayer's right to protest or contest such proposed deficiency. The
6 director shall within twenty days after filing such certificate notify the taxpayer by first class mail
7 postage prepaid.

8 (1) The lien shall arise on the date such assessment becomes final and shall be continuing
9 and shall attach to real or personal property or interest in real or personal property owned by the
10 taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless
11 sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed,
12 unless within such ten-year period, the certificate of lien has been refiled by the director of revenue
13 with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be
14 treated as if filed on the date of filing of the original certificate of lien, and shall expire ten years
15 after the refiling. A certificate of lien may not be refiled more than one time.

16 (2) If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by this
17 chapter when due and the assessment for which has become final, the director may file for record in
18 the office of the clerk of the circuit court of any county in which the taxpayer resides, or has a place
19 of business, or owns property, the certificate of lien specifying the amount of the tax, interest,
20 additions to tax and penalties due and the name of the liable taxpayer. The clerk of the circuit court
21 shall file such certificate and enter it in the record of the circuit court for judgments and decrees
22 under the procedure prescribed for filing transcripts of judgments. If the taxpayer does not reside,
23 have a place of business or own property in the state of Missouri, the director may file for record a
24 certificate of delinquency in the office of the clerk of the circuit court of Cole County. From the time
25 of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court,
26 the amount of the tax, interest, additions to tax and penalties specified therein shall have the full
27 force and effect of a default judgment of the circuit court until satisfied. Execution shall issue at the
28 request of the director of revenue or his agent as is provided in the case of other judgments. No
29 exemption shall be allowed from the levy of an execution issued for any delinquent tax, interest,
30 additions to tax or penalties due under the provisions of sections 143.191 to 143.265. No bond shall
31 be required of the director of revenue, his agent or of the sheriff before making the levy.

32 (3) The remedies in this subsection are cumulative and in addition to other collection
33 methods given the director of revenue. No action taken shall be construed as an election on the part
34 of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any
35 other remedy or action for which provision is made.

36 (4) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any
37 other person affected by the lien may notify the director of revenue. The taxpayer or other affected
38 person shall provide the director with the reasons the filing of the certificate of lien is erroneous or
39 improvident as to such person (including that the affected person's name or other identification is
40 similar to the taxpayer's) and a list of creditors with current addresses who are affected by the
41 department's action. Upon receipt of the creditor list, reasons and verification of the erroneous or
42 improvident filing, the director shall release the lien as to the taxpayer or the affected person, as
43 necessary, and notify all creditors, stating the certificate of lien was filed erroneously or
44 improvidently. If the certificate of lien was erroneously or improvidently filed the director shall
45 forthwith make a determination in writing which shall become a public record in the same place the
46 certificate of lien is noted under subsection 5 of this section that the same be expunged from the
47 record and give written notice thereof, duly certified, by certified mail to the recorder of deeds and
48 the clerk of the circuit court in the county where the same is recorded and upon receipt by the

1 recorder of deeds and the clerk of the circuit court of the certification the recorder and clerk shall
 2 immediately cause such record to be expunged. The director shall take whatever steps are necessary
 3 to ensure the lien is expunged. The director shall pay a three-dollar fee charged by the recorder
 4 when an erroneously or improvidently filed lien is expunged.

5 2. The lien imposed under subsection 1 of this section may be wholly or partly released by
 6 filing for record in the office of the county recorder a release thereof executed by the director of
 7 revenue upon payment of the tax, interest, additions to tax and penalties or upon receipt by the
 8 director of revenue of security sufficient to secure payment thereof, or by final judgment holding
 9 such certificate of lien to have been erroneously or improvidently imposed.

10 3. The director may release any part of the property subject to the lien by filing with the
 11 county recorder a copy of the original lien document and an affidavit containing a legal description
 12 of the property, and stating that the property is to be released from the lien. The county recorder
 13 shall note the partial release in the same manner as provided in section 443.090. The release of any
 14 specific property shall not affect in any manner other property subject to lien.

15 4. Each county recorder shall receive a fee of three dollars which shall be charged for the
 16 filing of each certificate of lien and a fee of one dollar and fifty cents for each release of lien filed for
 17 record. Such amounts shall be paid to the county recorder from funds appropriated to the department
 18 of revenue for that purpose. The county recorder shall be reimbursed by presenting a statement,
 19 showing the number of certificates and releases filed, to the department of revenue each calendar
 20 quarter. The department of revenue is authorized to collect an additional penalty from each taxpayer
 21 equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

22 5. The director of revenue shall establish and maintain records for all certificates of lien filed
 23 under this section. The director shall also maintain records of all releases of lien filed under this
 24 section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by
 25 the director under this section, to the extent such information is or may be on file with the recorder,
 26 shall be open to public inspection. Such records established and maintained by the director shall not
 27 be the official record and are not conclusive evidence of any liability of any taxpayer to this state.

28 6. If any action is taken by the director under the provisions of this chapter; including, but
 29 not limited to, section 143.791, to alter or abate any assessment upon which a judgment has been
 30 filed under the provisions of subsection 1 of this section, the director is authorized to file a
 31 modification or satisfaction of such judgment.

32 144.380. 1. In any case in which any assessment of tax, interest, additions to tax or penalty
 33 imposed under sections 144.010 to 144.510 has been made and has become final, the director of
 34 revenue may file for record in the recorder's office of any county in which the taxpayer owing such
 35 tax, interest, additions to tax or penalty resides, owns property or has a place of business a certificate
 36 of lien specifying the amount of the tax, additions to tax, interest or penalty due and the name of the
 37 person liable for the same. Included in the assessment, the director shall notify the taxpayer of the
 38 department's intent to file prior to the filing of such certificate. Such notification shall contain an
 39 explanation of the taxpayer's right to protest or contest such proposed assessment. The director shall
 40 within twenty days after filing such certificate notify the taxpayer by first class mail postage prepaid.

41 (1) The lien shall arise on the date such assessment becomes final and shall be continuing
 42 and shall attach to real or personal property or interest in real or personal property owned by the
 43 taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless
 44 sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed,
 45 unless within such ten-year period, the certificate of lien has been refiled by the director of revenue
 46 with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be
 47 treated as if filed on the date of filing of the original certificate of lien and shall expire ten years after
 48 the refiled. A certificate of lien may not be refiled more than one time.

1 (2) If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by
2 sections 144.010 to 144.525 when due and the assessment for which has become final, the director
3 may file for record in the office of the clerk of the circuit court of any county in which the taxpayer
4 resides, or has a place of business, or owns property, a certificate of lien specifying the amount of the
5 tax, interest, additions to tax and penalties due and the name of the liable taxpayer. The clerk of the
6 circuit court shall file such certificate and enter it in the record of the circuit court for judgments and
7 decrees under the procedure prescribed for filing transcripts of judgments. If the taxpayer does not
8 reside, have a place of business or own property in the state of Missouri, the director may file for
9 record a certificate of delinquency in the office of the clerk of the circuit court of Cole County. From
10 the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit
11 court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the
12 full force and effect of a default judgment of the circuit court until satisfied. Execution shall issue at
13 the request of the director of revenue or his agent as is provided in the case of other judgments. No
14 exemption shall be allowed from the levy of an execution issued for such delinquent tax, interest,
15 additions to tax or penalties and no bond shall be required of the director of revenue, his agent or of
16 the sheriff before making the levy.

17 (3) The remedies in this subsection are cumulative and in addition to other collection
18 methods given the director of revenue. No action taken shall be construed as an election on the part
19 of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any
20 other remedy or action for which provision is made.

21 (4) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any
22 other person affected by the lien may notify the director of revenue. The taxpayer or other affected
23 person shall provide the director with the reasons the filing of the certificate of lien is erroneous or
24 improvident as to such person (including that the affected person's name or other identification is
25 similar to the taxpayer's) and a list of creditors with current addresses who are affected by the
26 department's action. Upon receipt of the creditor list, reasons and verification of the erroneous or
27 improvident filing, the director shall release the lien as to the taxpayer or the affected person, as
28 necessary, and notify all creditors, stating the certificate of lien was filed erroneously or
29 improvidently. If the certificate of lien was erroneously or improvidently filed after August 13,
30 1987, the director shall forthwith make a determination in writing which shall become a public
31 record in the same place the certificate of lien is noted under subsection 5 of this section that the
32 same be expunged from the record and give written notice thereof, duly certified, by certified mail to
33 the recorder of deeds and the clerk of the circuit court in the county where the same is recorded and
34 upon receipt by the recorder of deeds and the clerk of the circuit court of the certification the
35 recorder and clerk shall immediately cause such record to be expunged. The director shall take
36 whatever steps are necessary to ensure the lien is expunged. The director shall pay a three-dollar fee
37 charged by the recorder when an erroneously or improvidently filed lien is expunged.

38 2. The lien imposed under subsection 1 of this section may be wholly or partly released by
39 filing for record in the office of the county recorder a release thereof executed by the director of
40 revenue upon payment of the tax, interest, additions to tax and penalties or upon receipt by the
41 director of revenue of security sufficient to secure payment thereof, or by final judgment holding
42 such certificate of lien to have been erroneously or improvidently imposed.

43 3. The director may release any part of the property subject to the lien by filing with the
44 county recorder a copy of the original lien document and an affidavit containing a legal description
45 of the property and stating that the property is to be released from the lien. The county recorder shall
46 note the partial release in the same manner as provided in section 443.090. The release of any
47 specific property shall not affect in any manner other property subject to lien.

48 4. Each county recorder shall receive a fee of three dollars which shall be charged for the

1 filing of each certificate of lien and a fee of one dollar and fifty cents for each release of lien filed for
 2 record. Such amounts shall be paid to the county recorder from funds appropriated to the department
 3 of revenue for that purpose. The county recorder shall be reimbursed by presenting a statement,
 4 showing the number of certificates and releases filed, to the department of revenue each calendar
 5 quarter. The department of revenue is authorized to collect an additional penalty from each taxpayer
 6 equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

7 5. The director of revenue shall establish and maintain records for all certificates of lien filed
 8 under this section. The director shall also maintain records of all releases of lien filed under this
 9 section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by
 10 the director under this section, to the extent such information is or may be on file with the recorder,
 11 shall be open to public inspection. Such records established and maintained by the director shall not
 12 be the official record and are not conclusive evidence of any liability of any taxpayer to this state.

13 6. If any action is taken by the director under the provisions of this chapter; including, but
 14 not limited to, section 144.425, to alter or abate any assessment upon which a judgment has been
 15 filed under the provisions of subsection 1 of this section, the director is authorized to file a
 16 modification or satisfaction of such judgment.

17 144.690. 1. (1) In any case in which any assessment of tax, interest, additions to tax, or
 18 penalty imposed under sections 144.600 to 144.745 has been made and has become final, the director
 19 of revenue may file for record in the recorder's office of any county in which the taxpayer owing
 20 such tax, interest, additions to tax, or penalty resides, owns property, or has a place of business a
 21 certificate of lien specifying the amount of the tax, interest, additions to tax, or penalty due and the
 22 name of the person liable for the same. Included in the assessment, the director shall notify the
 23 taxpayer of the department's intent to file before the filing of such certificate. Such notification shall
 24 contain an explanation of the taxpayer's right to protest or contest such proposed assessment. The
 25 director shall, within twenty days after filing such certificate, notify the taxpayer by first class mail
 26 postage prepaid.

27 (2) The lien shall arise on the date such assessment becomes final and shall be continuing
 28 and shall attach to real or personal property or interest in real or personal property owned by the
 29 taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless
 30 sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed,
 31 unless within such ten-year period, the certificate of lien has been refiled by the director of revenue
 32 with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be
 33 treated as if filed on the date of filing of the original certificate of lien and shall expire ten years after
 34 the refiled. A certificate of lien shall not be refiled more than one time.

35 (3) If any taxpayer refuses or neglects to pay any tax, interest or penalty imposed by this law
 36 when due and the assessment of which has become final, the director may file for record in the office
 37 of the clerk of the circuit court in any county in which the taxpayer owing the tax, interest or penalty
 38 resides, or has a place of business or in which he has property, or all of them, a certificate specifying
 39 the amount of the tax, interest and penalties due and the name of the taxpayer liable. The clerk of the
 40 circuit court shall file the certificate of record and enter it in the record of the circuit court for
 41 judgments and decrees under the procedure prescribed for filing transcripts of judgments. From the
 42 time of the filing of the certificate, the amount of the tax, interest and penalties specified therein shall
 43 have the force and effect of a judgment of the circuit court until satisfied by the director of revenue
 44 through [his] the director's duly authorized agents. Execution shall issue at the request of the
 45 director of revenue or [his] the director's agent as is provided in the case of other judgments. No
 46 exemption shall be allowed from the levy of an execution issued for the tax, interest and penalties
 47 and no indemnifying bond is required by the sheriff before making levy.

48 [2.] (4) The foregoing remedy is cumulative and in addition to the methods given the

1 director of revenue for the collection of the Missouri sales tax which are here made available to
 2 [him] the director in the collections of the tax, interest, and penalties imposed by sections 144.600 to
 3 144.745. No action taken shall be construed as an election on the part of the state or any of its
 4 officers to pursue any remedy or action hereunder to the exclusion of any other remedy or action for
 5 which provision is made.

6 (5) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any
 7 other person affected by the lien may notify the director of revenue. The taxpayer or other affected
 8 person shall provide the director with the reasons the filing of the certificate of lien is erroneous or
 9 improvident as to such person, including that the affected person's name or other identification is
 10 similar to the taxpayer's, and a list of creditors with current addresses who are affected by the
 11 department's action. Upon receipt of the creditor list, reasons, and verification of the erroneous or
 12 improvident filing, the director shall release the lien as to the taxpayer or the affected person, as
 13 necessary, and notify all creditors, stating the certificate of lien was filed erroneously or
 14 improvidently. If the certificate of lien was erroneously or improvidently filed after August 13,
 15 1987, the director shall make a determination in writing which shall become a public record in the
 16 same place the certificate of lien is noted under subsection 5 of this section that the certificate of lien
 17 be expunged from the record and give written notice thereof, duly certified, by certified mail to the
 18 recorder of deeds and the clerk of the circuit clerk in the county where the certificate of lien is
 19 recorded. Upon receipt by the recorder of deeds and the clerk of the circuit court of the certification,
 20 the recorder and clerk shall immediately cause such record to be expunged. The director shall take
 21 whatever steps are necessary to ensure the lien is expunged. The director shall pay a three-dollar fee
 22 charged by the recorder when an erroneously or improvidently filed lien is expunged.

23 2. The lien imposed under subsection 1 of this section may be wholly or partly released by
 24 filing for record in the office of the county recorder a release thereof executed by the director of
 25 revenue upon payment of the tax, interest, additions to tax, and penalties or upon receipt by the
 26 director of revenue of security sufficient to secure payment thereof, or by final judgment holding
 27 such certificate of lien to have been erroneously or improvidently imposed.

28 3. The director may release any part of the property subject to the lien by filing with the
 29 county recorder a copy of the original lien document and an affidavit containing a legal description
 30 of the property and stating that the property is to be released from the lien. The county recorder shall
 31 note the partial release in the same manner as provided in section 443.090. The release of any
 32 specific property shall not affect in any manner other property subject to lien.

33 4. Each county recorder shall receive a fee of three dollars which shall be charged for the
 34 filing of each certificate of lien, and a fee of one dollar and fifty cents for each release of lien filed
 35 for record. Such amounts shall be paid to the county recorder from funds appropriated to the
 36 department of revenue for that purpose. The county recorder shall be reimbursed by presenting a
 37 statement, showing the number of certificates and releases filed, to the department of revenue each
 38 calendar quarter. The department of revenue is authorized to collect an additional penalty from each
 39 taxpayer equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

40 5. The director of revenue shall establish and maintain records for all certificates of lien filed
 41 under this section. The director shall also maintain records of all releases of lien filed under this
 42 section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by
 43 the director under this section, to the extent such information is or may be on file with the recorder,
 44 shall be open to public inspection. Such records established and maintained by the director shall not
 45 be the official record and are not conclusive evidence of any liability of any taxpayer to this state.

46 6. If any action is taken by the director under the provisions of this chapter to alter or abate
 47 any assessment upon which a judgment has been filed under the provisions of subsection 1 of this
 48 section, the director is authorized to file a modification or satisfaction of such judgment." ; and

1
2
3 Further amend said bill by amending the title, enacting clause, and intersectional references
4 accordingly.