

FIRST REGULAR SESSION

# HOUSE BILL NO. 659

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCCREERY.

0705H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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

Section A. Section 143.121, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 143.121, 285.400, 285.405, 285.410, 285.411, 285.412, 285.413, 285.414, 285.415, and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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116           8. (1) Beginning January 1, 2014, in addition to the subtractions provided in this section,  
117 one hundred percent of the cost incurred by a taxpayer for a home energy audit conducted by an  
118 entity certified by the department of natural resources under section 640.153 or the  
119 implementation of any energy efficiency recommendations made in such an audit shall be  
120 subtracted from the taxpayer's federal adjusted gross income to the extent the amount paid for  
121 any such activity is included in federal taxable income. The taxpayer shall provide the  
122 department of revenue with a summary of any recommendations made in a qualified home

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

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

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

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

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

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

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

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

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

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

**(4) "Child", a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic or civil union partner, or the person to whom the employee stands in loco parentis who is under nineteen years of age**

19 or nineteen years of age or older but incapable of self-care because of mental or physical  
20 impairment;

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

22 (6) "Employee", any person performing service performed for remuneration unless  
23 it is shown to the satisfaction of the department that such services were performed by an  
24 independent contractor. In determining the existence of the independent contractor  
25 relationship, the common law of agency right to control shall be applied. The common law  
26 of agency right to control test shall include but not be limited to: if the alleged employer  
27 retains the right to control the manner and means by which the results are to be  
28 accomplished, the person who performs the service is an employee. If only the results are  
29 controlled, the person performing the service is an independent contractor;

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

32 (8) "Family member", a child, parent, grandparent, grandchild, sibling, spouse,  
33 domestic or civil union partner, or household member, or any ward as that term is defined  
34 in section 475.020;

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

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

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

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

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

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

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

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

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

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

57           (15) "Parent-in-law", the parent of a spouse or domestic or civil union partner;

58           (16) "Serious health condition", an illness, injury, impairment, or physical or  
59 mental condition that involves inpatient care in a hospital, hospice, or residential health  
60 care facility, or continuing medical treatment or continuing supervision by a health care  
61 provider. The term shall include medical attention, services, or counseling for victims of  
62 stalking, domestic violence, abuse, or sexual assault, as such terms are defined in section  
63 455.010, or victims of trafficking for the purpose of sexual exploitation as described in  
64 section 566.209;

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

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

68           (19) "Uniformed services":

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

71           (b) The Merchant Marine, the commissioned corps of the Public Health Service,  
72 or the commissioned corps of the National Oceanic and Atmospheric Administration of the  
73 United States; or

74           (c) The Missouri National Guard.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

18 (a) A treating physician;

19 (b) A health care provider;

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

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

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

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

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

35 (3) The probable duration of the condition;

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

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

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

44 4. Any claim of an individual who obtains care and treatment outside the state shall  
45 be supported by a certificate of a treating physician or health care provider duly licensed

46 or certified by the state or foreign country in which the claimant is receiving care and  
47 treatment.

48 5. Nothing in this section shall be construed to preclude the department from  
49 requesting additional medical evidence to supplement any claim. Any cost incurred for  
50 procuring additional medical evidence shall be paid by the employee. The department may  
51 require that the additional evidence include any or all of the following:

52 (1) Identification of diagnoses;

53 (2) Identification of symptoms;

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

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

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

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

63 (4) An affidavit from an employee averring that the employee or such employee's  
64 spouse gave birth to a child or has adopted or received a child in connection with foster  
65 care.

285.411. Employees shall provide at least thirty days advance notice to their  
2 employer before family and medical leave is to begin if the need for the leave is foreseeable.  
3 If thirty days notice is not practicable, notice shall be given to the employer as soon as  
4 practicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) The amount of:

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

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

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

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

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

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

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

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

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

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

9 2. Not later than three years after the effective date of sections 285.400 to 285.416,  
10 the state auditor shall submit to the general assembly a report on the Missouri earned  
11 family and medical leave benefits paid for any month during the one-year period beginning  
12 on the effective date of sections 285.400 to 285.416. The report shall include the following:

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

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

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

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

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

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

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

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

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

          285.416. Any rule or portion of a rule, as that term is defined in section 536.010 that  
2 is created under the authority delegated in sections 285.400 to 285.415 shall become  
3 effective only if it complies with and is subject to all of the provisions of chapter 536, and,  
4 if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of

5 the powers vested with the general assembly pursuant to chapter 536, to review, to delay  
6 the effective date, or to disapprove and annul a rule are subsequently held  
7 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
8 after August 28, 2017, shall be invalid and void.

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

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