

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 188, Page 10, Section 285.545, Line 125,
2 by inserting after all of said section and line the following:

3
4 "290.170. 1. Section 290.170 shall be known and may be cited as the "Missouri Wage Theft
5 Prevention and Wage Recovery Act".

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

7 (1) "Complainant", an individual who is an employee, separated employee, or other worker
8 who has filed a complaint with the division under the provisions of this section alleging unpaid
9 wages, improperly paid wages, wage theft, or other wage related prohibited practice by an employer
10 under this chapter or chapter 285;

11 (2) "Department", the department of labor and industrial relations;

12 (3) "Division", the division of labor standards within the department of labor and industrial
13 relations;

14 (4) "Final compensation", payments due or owed to separated employees including wages,
15 gratuities, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned
16 vacation and earned holidays, and any other compensation owed to the separated employee by the
17 employer by reason of the separated employee's employment, performance of services, or pursuant
18 to an employment contract or agreement between the two parties, payable in legal tender of the
19 United States or checks on banks convertible into cash on demand at full face value;

20 (5) "Gratuities", voluntary monetary contributions to an employee from a guest, patron, or
21 customer in connection with services rendered;

22 (6) "Wage supplements", where an employer is legally committed through a collective
23 bargaining agreement or otherwise to make contributions to an employee benefit, trust, or fund on
24 the basis of a certain amount per hour, day, week, or other period of time, the amount due from the
25 employer to such employee benefit, trust, or fund, subject to the wage collection provisions of this
26 section;

27 (7) "Wage theft", a violation of this chapter when an employer does not pay an employee for
28 work that the employee has performed, depriving such employee of wages to which the employee is
29 legally entitled including, but not limited to, violation of minimum wage requirements, failure to
30 pay overtime compensation, required off-the-clock work, failure to provide final compensation

Action Taken _____ Date _____

1 payments, misclassification of employees as exempt from overtime compensation or as independent
2 contractors, and improperly withholding gratuities. The term "wage theft" also includes a violation
3 of this chapter or chapter 285 when an employer with intentional or willful disregard with the intent
4 to deceive:

5 (a) Fails to pay an employee all wages at the employee's rate or rates of pay or at the rate or
6 rates required by law, including any applicable statute, regulation rule, ordinance, government
7 resolution or policy, contract, or other legal authority, whichever rate of pay is greater;

8 (b) Directly or indirectly causes any employee to give a receipt for wages for a greater
9 amount than that actually paid to the employee for services rendered;

10 (c) Directly or indirectly demands or receives from any employee any rebate or refund from
11 the wages owed the employee under contract of employment with the employer; or

12 (d) Makes or attempts to make it appear in any manner that the wages paid to any employee
13 were greater than the amount actually paid to the employee;

14 (8) "Wages", any compensation, salary, commissions or any other form of remuneration due
15 or owed to an employee or separated employee, by reason of his or her employment, performance of
16 services, or pursuant to an employment contract or agreement, payable in legal tender of the United
17 States or checks on banks convertible into cash on demand at full face value. The term "wage"
18 includes final compensation, gratuities, and wage supplements, as such terms are defined under this
19 section.

20 3. In addition to the provisions and authority granted under this chapter and chapter 285, the
21 Missouri attorney general's office, in coordination with the division, shall have authority to:

22 (1) Investigate, enforce, and attempt to resolve controversies between employees and
23 employers with respect to wage claims or complaints arising under this chapter or other wage-
24 related laws under the purview of the department or the division and to that end, the power to
25 administer oaths, subpoena and examine witnesses, to issue subpoenas duces tecum requiring the
26 production of such books, papers, records, and documents as may be evidence of any matter under
27 inquiry and to examine and inspect the same as may relate to the question in dispute in like manner
28 as in civil cases in the circuit court. Service of such subpoenas shall be made by any sheriff or any
29 person in the same manner as in civil actions. Any court in this state, upon the application of the
30 attorney general, may compel attendance of witnesses, the production of books and papers, and the
31 giving of testimony before the division or the court by attachment for contempt or in any other way
32 as the production of evidence may be compelled before such court;

33 (2) Take assignments of wage claims in the name of the department, or its successor agency,
34 or the division and prosecute actions for the collection of wages for employees, a class of
35 employees, or with respect to all employees of the class to whom payments are due, and act in their
36 behalf in a class action, when in the determination of the department or the division such claims are
37 valid and enforceable in the courts. In the event there is a judgment rendered against the employer,
38 the court shall assess as part of such judgment the costs of such proceeding. Upon collection of
39 such judgments the department, the division, or attorney general shall pay from the proceeds of such

1 judgment such costs to such person who is by law entitled to the same. The attorney general may
2 join in a single proceeding any number of wage claims against the same employer but the court shall
3 have discretionary power to order a severance or separate trial for hearings;

4 (3) Bring a civil suit against an employer on behalf of impacted employees and file a
5 complaint in any court of competent jurisdiction for violations of this chapter or other related wage
6 complaints under state law;

7 (4) Bring criminal charges for the violations enumerated under this chapter or other wage
8 violations enumerated under state law and enforceable by the department;

9 (5) File a notice of a lien on an employer's property for class-action lawsuits;

10 (6) Enter into agreements with other states to collect unpaid wages from out-of-state
11 employers and to perform reciprocal services for such states in Missouri; and

12 (7) Take any appropriate enforcement action to secure compliance where prompt
13 compliance is not forthcoming, including initiating a civil action, except where prohibited by state
14 or federal law, requesting that city agencies or departments revoke or suspend any registration
15 certificates, permits, or licenses held or requested by the employer or person in violation until such
16 time as the violation is remedied.

17 4. (1) A cause of civil action for equitable and monetary relief may be brought against an
18 employer by the attorney general and, or alternatively, by an employee, in any court of competent
19 jurisdiction for any violation of this chapter or any law or regulation implementing its provisions
20 within three years of the violation, or within one year after notification to the complainant of final
21 disposition by the division of a complaint for the same violation, whichever is later.

22 (2) Any person may file a complaint with the division alleging noncompliance with this
23 section, chapter, or chapter 285. Any employee may file a complaint with the division alleging
24 violations of this chapter by submitting a signed, completed wage complaint on the form provided
25 by the division which shall state the name and address of the employer alleged to have committed
26 the violation and which shall set forth the particulars thereof and such other information as may be
27 required by the division, and by submitting copies of all supporting documentation. The form may
28 be submitted electronically in the method established by the division or by any other method the
29 division establishes by rule and by posting on the department website.

30 (3) Complaints shall be filed within one year after the wages were due, however, the filing
31 of a complaint shall not bar the employee seeking relief in the courts for such wage claims and the
32 lack of a filed complaint shall not be raised as a defense by the employer in any subsequent
33 proceedings. The date of filing of the complaint with the division shall be deemed as the
34 commencement of action if the employee does not pursue a private cause of action and a final
35 determination is issued or the attorney general files on behalf of the complainant. If the division
36 issues a determination that is not a final determination and does not result in a resolution of the
37 wage complaint or dispute or if the division refers a complaint for prosecution to the attorney
38 general and the attorney general issues a notice declining to prosecute, the statute of limitations shall

1 be an additional three years from the date of determination or notice, where no final determination
2 or final judgment has been issued.

3 (4) Complaints shall be reviewed and investigated by the division within sixty days of the
4 receipt of the wage complaint by the division. The division may refer complaints to the attorney
5 general's office for further investigation, enforcement, prosecution, and collection of any wage claim
6 or deficiency. The attorney general may prosecute any noncompliance or violation associated with
7 this chapter.

8 (5) Any and all reports, records, tapes, photographs, and similar materials or documentation
9 submitted by any person, to the division or otherwise obtained by the division under this section,
10 used to conduct an investigation for any violation under this chapter, shall be considered
11 confidential and not subject to the requirements of chapter 610. Nothing in this subsection prohibits
12 the division from releasing records used to conduct an investigation to the local, state, or federal law
13 enforcement authority or federal or state agency conducting an investigation, upon written request.

14 (6) If the division's determination finds that no violation occurred, the division shall issue a
15 final determination, informing the employee that he or she has one year from the date of the final
16 determination to appeal the final determination.

17 (7) Any prosecution by the attorney general for a violation of the provisions of this chapter
18 as a result of a complaint filed with the division shall be commenced within three years.

19 (8) On or before January 1, 2025, and on or before each January first thereafter, the attorney
20 general shall forward to the division and the members of the general assembly the first edition of an
21 annual report of the costs of prosecuting violations under this chapter. The report shall include the
22 number of complaints reported to the attorney general by county by the division, the number of
23 cases prosecuted by county by the attorney general, fines and penalties levied and received, and all
24 incidental costs.

25 5. (1) Any employee with a wage claim as described under this section, shall be entitled to
26 recover any such wages through a complaint filed with the division or through a civil action brought
27 by the employee, but not both.

28 (2) At the discretion of the court, the court may determine, assess, and award any or all of
29 the following:

30 (a) Additional damages of five percent of the amount of any such unpaid wages due for each
31 month following the date of payment during which such wages remain unpaid;

32 (b) Continuing wages of a separated employee as a penalty from the due date thereof at the
33 same rate until paid or until an action therefor was commenced, if the court determines that an
34 employer willfully or intentionally failed to pay, without abatement or reduction, any wages of a
35 separated employee; and

36 (c) Additional statutory damages of up to five hundred dollars per plaintiff per violation, if a
37 court finds that the respondent employer has willfully or intentionally violated any provision of this
38 chapter or any regulation under this chapter.

1 (3) An employee who conceals or absents himself or herself to avoid payment to him or her,
2 or who refuses to receive the payment when fully tendered to him or her, including any penalty then
3 accrued under this section, is not entitled to any benefit under this section for the time during which
4 he or she so avoids payment.

5 (4) In a civil action brought by an employee, such employee shall also recover costs and all
6 reasonable attorney's fees.

7 (5) Additional civil penalties, costs, and attorney's fees shall be retained and split between
8 the division and by the attorney general's office if recovered by such agency and shall be used to
9 finance activities to enforce this chapter.

10 6. In the case of a dispute over wages, the employer shall pay, without condition, all wages
11 or parts thereof, conceded by the employer to be due or owed, leaving to the employee all remedies
12 to which he or she may otherwise be entitled as to any balance that remains outstanding and
13 claimed. The acceptance by an employee of a disputed paycheck shall not constitute a release as to
14 the balance of his or her claim and any release or restrictive endorsement required by an employer
15 as a condition to payment shall be a violation of this chapter and shall be void. However, if the
16 disputed paycheck satisfies the outstanding amount owed by the employer, a release does not
17 constitute a violation.

18 7. (1) In addition to the remedies provided under this chapter, any employer or any agent of
19 an employer, who, being able to pay wages and being under a duty to pay, willfully refuses to pay or
20 falsely denies the amount or validity thereof or that the same is due, with intent to secure for
21 himself, herself, or another person any underpayment of such indebtedness or with intent to annoy,
22 harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due, upon
23 conviction, is guilty of:

24 (a) For unpaid wages in the amount of five thousand dollars or less, a class B misdemeanor;
25 or

26 (b) For unpaid wages in the amount of more than five thousand dollars, a class A
27 misdemeanor.

28 (2) Each day during which any violation continues shall constitute a separate and distinct
29 offense. Any employer or agent of an employer who violates this section a subsequent time within
30 two years of a prior criminal conviction under this section is guilty, upon conviction, of a class E
31 felony.

32 8. (1) At the court's discretion, it may determine, assess, and award any or all of the
33 following against the employer:

34 (a) Additional damages of five percent of the amount of any such underpayments for each
35 month following the date of payment during which such underpayments remain unpaid;

36 (b) Continuing wages of a separated employee as a penalty from the due date thereof at the
37 same rate until paid or until an action therefor was commenced, if the court determines that if an
38 employer willfully failed to pay, without abatement or reduction, any wages of an employee who
39 was discharged or who quit;

1 (c) Additional statutory damages of up to five hundred dollars per plaintiff per violation, if a
 2 court finds that the respondent employer has intentionally violated any provision of this chapter or
 3 any regulation under this chapter;

4 (d) An administrative fee paid by the employer in any claim brought by the attorney general
 5 under the provisions of this chapter, to be split between the division and the attorney general for
 6 administration of this section, in the amount of:

7 a. Two hundred fifty dollars if the amount ordered as wages owed is three thousand dollars
 8 or less;

9 b. Five hundred dollars if the amount ordered as wages owed is more than three thousand
 10 dollars, but less than ten thousand dollars; and

11 c. One thousand dollars if the amount ordered as wages owed is ten thousand dollars or
 12 more; and

13 (e) A penalty of twenty percent to the division and attorney general of the amount due and a
 14 penalty of one percent per calendar day of the amount due for each day of delay in paying such
 15 wages to an employee, when such employer is ordered by a court to pay such wages, fails to seek
 16 timely review of such order as provided for under state law, and fails to comply within thirty-five
 17 days of when such a court order is entered.

18 (2) Penalties and fees under this section may be sought and recovered in a civil action
 19 brought by the department in any circuit court. In any such civil action, the department shall be
 20 represented by the attorney general.

21 9. (1) There is hereby created in the state treasury the "Wage Theft Enforcement Fund",
 22 which shall consist of moneys collected or recovered as fees and civil penalties under this section,
 23 except those owing to the affected employee. The state treasurer shall be custodian of the fund. In
 24 accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The
 25 fund shall be a dedicated fund and, upon appropriation, moneys in this fund shall be used solely as
 26 provided in this section for enforcement of this chapter.

27 (2) Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining
 28 in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

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

31 10. In addition to the rulemaking authority under this chapter, specific additional authority is
 32 given to the department for the enforcement of this section. The department shall establish rules:

33 (1) To protect the interests of both parties in cases of wage disputes;

34 (2) To establish the form and content of record and specify the documents that are required
 35 for the filing of the complaint;

36 (3) To establish, administer, and enforce the complaint filing, investigation, prosecution, and
 37 collection process; and

38 (4) For any other procedures, documentation, or information the department deems
 39 necessary to comply with this section.

1 11. The division may promulgate all necessary rules and regulations for the administration
2 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is
3 created under the authority delegated in this section shall become effective only if it complies with
4 and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
5 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
6 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
7 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or
8 adopted after August 28, 2023, shall be invalid and void."; and

9
10 Further amend said bill by amending the title, enacting clause, and intersectional references
11 accordingly.