

FIRST REGULAR SESSION

# HOUSE BILL NO. 1342

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE UNSICKER.

0286H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 290, RSMo, by adding thereto one new section relating to enforcement of wage payments, with penalty provisions.

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

Section A. Chapter 290, RSMo, is amended by adding thereto one new section, to be known as section 290.170, to read as follows:

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

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

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

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

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

**(4) "Final compensation", payments due or owed to separated employees including wages, gratuities, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed to the separated employee by the employer by reason of the separated employee's employment, performance of services, or pursuant to an employment contract or agreement between the two parties, payable in legal tender**

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 of the United States or checks on banks convertible into cash on demand at full face  
18 value;

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

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

26 (7) "Wage theft", a violation of this chapter when an employer does not pay an  
27 employee for work that the employee has performed, depriving such employee of wages  
28 to which the employee is legally entitled including, but not limited to, violation of  
29 minimum wage requirements, failure to pay overtime compensation, required off-the-  
30 clock work, failure to provide final compensation payments, misclassification of  
31 employees as exempt from overtime compensation or as independent contractors, and  
32 improperly withholding gratuities. The term "wage theft" also includes a violation of  
33 this chapter or chapter 285 when an employer with intentional or willful disregard with  
34 the intent to deceive:

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

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

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

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

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

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

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

67           **(2) Take assignments of wage claims in the name of the department, or its**  
68 **successor agency, or the division and prosecute actions for the collection of wages for**  
69 **employees, a class of employees, or with respect to all employees of the class to whom**  
70 **payments are due, and act in their behalf in a class action, when in the determination of**  
71 **the department or the division such claims are valid and enforceable in the courts. In**  
72 **the event there is a judgment rendered against the employer, the court shall assess as**  
73 **part of such judgment the costs of such proceeding. Upon collection of such judgments**  
74 **the department, the division, or attorney general shall pay from the proceeds of such**  
75 **judgment such costs to such person who is by law entitled to the same. The attorney**  
76 **general may join in a single proceeding any number of wage claims against the same**  
77 **employer but the court shall have discretionary power to order a severance or separate**  
78 **trial for hearings;**

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

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

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

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

87           **(7) Take any appropriate enforcement action to secure compliance where**  
88 **prompt compliance is not forthcoming, including initiating a civil action, except where**

89 prohibited by state or federal law, requesting that city agencies or departments revoke  
90 or suspend any registration certificates, permits, or licenses held or requested by the  
91 employer or person in violation until such time as the violation is remedied.

92 4. (1) A cause of civil action for equitable and monetary relief may be brought  
93 against an employer by the attorney general and, or alternatively, by an employee, in  
94 any court of competent jurisdiction for any violation of this chapter or any law or  
95 regulation implementing its provisions within three years of the violation, or within one  
96 year after notification to the complainant of final disposition by the division of a  
97 complaint for the same violation, whichever is later.

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

107 (3) Complaints shall be filed within one year after the wages were due, however,  
108 the filing of a complaint shall not bar the employee seeking relief in the courts for such  
109 wage claims and the lack of a filed complaint shall not be raised as a defense by the  
110 employer in any subsequent proceedings. The date of filing of the complaint with the  
111 division shall be deemed as the commencement of action if the employee does not pursue  
112 a private cause of action and a final determination is issued or the attorney general files  
113 on behalf of the complainant. If the division issues a determination that is not a final  
114 determination and does not result in a resolution of the wage complaint or dispute or if  
115 the division refers a complaint for prosecution to the attorney general and the attorney  
116 general issues a notice declining to prosecute, the statute of limitations shall be an  
117 additional three years from the date of determination or notice, where no final  
118 determination or final judgment has been issued.

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

124 (5) Any and all reports, records, tapes, photographs, and similar materials or  
125 documentation submitted by any person, to the division or otherwise obtained by the

126 division under this section, used to conduct an investigation for any violation under this  
127 chapter, shall be considered confidential and not subject to the requirements of chapter  
128 610. Nothing in this subsection prohibits the division from releasing records used to  
129 conduct an investigation to the local, state, or federal law enforcement authority or  
130 federal or state agency conducting an investigation, upon written request.

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

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

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

143 5. (1) Any employee with a wage claim as described under this section, shall be  
144 entitled to recover any such wages through a complaint filed with the division or  
145 through a civil action brought by the employee, but not both.

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

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

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

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

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

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

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

167           **6. In the case of a dispute over wages, the employer shall pay, without condition,**  
168 **all wages or parts thereof, conceded by the employer to be due or owed, leaving to the**  
169 **employee all remedies to which he or she may otherwise be entitled as to any balance**  
170 **that remains outstanding and claimed. The acceptance by an employee of a disputed**  
171 **paycheck shall not constitute a release as to the balance of his or her claim and any**  
172 **release or restrictive endorsement required by an employer as a condition to payment**  
173 **shall be a violation of this chapter and shall be void. However, if the disputed paycheck**  
174 **satisfies the outstanding amount owed by the employer, a release does not constitute a**  
175 **violation.**

176           **7. (1) In addition to the remedies provided under this chapter, any employer or**  
177 **any agent of an employer, who, being able to pay wages and being under a duty to pay,**  
178 **willfully refuses to pay or falsely denies the amount or validity thereof or that the same**  
179 **is due, with intent to secure for himself, herself, or another person any underpayment of**  
180 **such indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the**  
181 **person to whom such indebtedness is due, upon conviction, is guilty of:**

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

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

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

190           **8. (1) At the court's discretion, it may determine, assess, and award any or all of**  
191 **the following against the employer:**

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

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

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

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

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

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

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

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

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

220 9. (1) There is hereby created in the state treasury the "Wage Theft  
221 Enforcement Fund", which shall consist of moneys collected or recovered as fees and  
222 civil penalties under this section, except those owing to the affected employee. The state  
223 treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180,  
224 the state treasurer may approve disbursements. The fund shall be a dedicated fund and,  
225 upon appropriation, moneys in this fund shall be used solely as provided in this section  
226 for enforcement of this chapter.

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

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

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

- 236           **(1) To protect the interests of both parties in cases of wage disputes;**  
237           **(2) To establish the form and content of record and specify the documents that**  
238 **are required for the filing of the complaint;**  
239           **(3) To establish, administer, and enforce the complaint filing, investigation,**  
240 **prosecution, and collection process; and**  
241           **(4) For any other procedures, documentation, or information the department**  
242 **deems necessary to comply with this section.**
- 243           **11. The division may promulgate all necessary rules and regulations for the**  
244 **administration of this section. Any rule or portion of a rule, as that term is defined in**  
245 **section 536.010, that is created under the authority delegated in this section shall**  
246 **become effective only if it complies with and is subject to all of the provisions of chapter**  
247 **536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable**  
248 **and if any of the powers vested with the general assembly pursuant to chapter 536 to**  
249 **review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
250 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
251 **adopted after August 28, 2023, shall be invalid and void.**

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