

SECOND REGULAR SESSION

HOUSE BILL NO. 2098

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE THOMPSON.

3826H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 288.036 as enacted by house bill no. 150, ninety-eighth general assembly, first regular session, section 288.036 as enacted by house bill no. 1456, ninety-third general assembly, second regular session, section 288.060 as enacted by house bill no. 150, ninety-eighth general assembly, first regular session, and section 288.060 as enacted by house bill no. 163, ninety-sixth general assembly, first regular session, and to enact in lieu thereof two new sections relating to employment security.

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

Section A. Section 288.036 as enacted by house bill no. 150, ninety-eighth general
2 assembly, first regular session, section 288.036 as enacted by house bill no. 1456, ninety-third
3 general assembly, second regular session, section 288.060 as enacted by house bill no. 150,
4 ninety-eighth general assembly, first regular session, and section 288.060 as enacted by house
5 bill no. 163, ninety-sixth general assembly, first regular session, are repealed and two new
6 sections enacted in lieu thereof, to be known as sections 288.036 and 288.060, to read as
7 follows:

2 ~~[288.036. 1. "Wages" means all remuneration, payable or paid, for~~
3 ~~personal services including commissions and bonuses and, except as provided~~
4 ~~in subdivision (7) of this section, the cash value of all remuneration paid in any~~
5 ~~medium other than cash. Gratuities, including tips received from persons~~
6 ~~other than the employing unit, shall be considered wages only if required to be~~
7 ~~reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C.~~
8 ~~Section 3306, and shall be, for the purposes of this chapter, treated as having~~
9 ~~been paid by the employing unit. Severance pay shall be considered as wages~~
10 ~~to the extent required pursuant to the Federal Unemployment Tax Act, 26~~
~~U.S.C. Section 3306(b). Vacation pay, termination pay, severance pay and~~

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.

11 holiday pay shall be considered as wages for the week with respect to which it
12 is payable. The total amount of wages derived from severance pay, if paid to
13 an insured in a lump sum, shall be prorated on a weekly basis at the rate of pay
14 received by the insured at the time of termination for the purposes of
15 determining unemployment benefits eligibility. The term "wages" shall not
16 include:

17 (1) The amount of any payment made (including any amount paid by
18 an employing unit for insurance or annuities, or into a fund, to provide for any
19 such payment) to, or on behalf of, an individual under a plan or system
20 established by an employing unit which makes provision generally for
21 individuals performing services for it or for a class or classes of such
22 individuals, on account of:

23 (a) Sickness or accident disability, but in case of payments made to an
24 employee or any of the employee's dependents this paragraph shall exclude
25 from the term wages only payments which are received pursuant to a workers'
26 compensation law; or

27 (b) Medical and hospitalization expenses in connection with sickness
28 or accident disability; or

29 (c) Death;

30 (2) The amount of any payment on account of sickness or accident
31 disability, or medical or hospitalization expenses in connection with sickness
32 or accident disability, made by an employing unit to, or on behalf of, an
33 individual performing services for it after the expiration of six calendar
34 months following the last calendar month in which the individual performed
35 services for such employing unit;

36 (3) The amount of any payment made by an employing unit to, or on
37 behalf of, an individual performing services for it or his or her beneficiary:

38 (a) From or to a trust described in 26 U.S.C. Section 401(a) which is
39 exempt from tax pursuant to 26 U.S.C. Section 501(a) at the time of such
40 payment unless such payment is made to an employee of the trust as
41 remuneration for services rendered as such an employee and not as a
42 beneficiary of the trust; or

43 (b) Under or to an annuity plan which, at the time of such payments,
44 meets the requirements of Section 404(a)(2) of the Federal Internal Revenue
45 Code (26 U.S.C.A. Section 404);

46 (4) The amount of any payment made by an employing unit (without
47 deduction from the remuneration of the individual in employment) of the tax
48 imposed pursuant to Section 3101 of the Federal Internal Revenue Code (26
49 U.S.C.A. Section 3101) upon an individual with respect to remuneration paid
50 to an employee for domestic service in a private home or for agricultural labor;

51 (5) Remuneration paid in any medium other than cash to an individual
52 for services not in the course of the employing unit's trade or business;

53 (6) Remuneration paid in the form of meals provided to an individual
54 in the service of an employing unit where such remuneration is furnished on
55 the employer's premises and at the employer's convenience, except that
56 remuneration in the form of meals that is considered wages and required to be
57 reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C.
58 Section 3306 shall be reported as wages as required thereunder;

59 (7) For the purpose of determining wages paid for agricultural labor as
60 defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034
61 and for domestic service as defined in subsection 13 of section 288.034, only
62 cash wages paid shall be considered;

63 (8) Beginning on October 1, 1996, any payment to, or on behalf of, an
64 employee or the employee's beneficiary under a cafeteria plan, if such payment
65 would not be treated as wages pursuant to the Federal Unemployment Tax Act.

66 2. ~~The increases or decreases to the state taxable wage base for the~~
67 remainder of calendar year 2004 shall be eight thousand dollars, and the state
68 taxable wage base in calendar year 2005, and each calendar year thereafter,
69 shall be determined by the provisions within this subsection. On January 1,
70 2005, the state taxable wage base for calendar year 2005, 2006, and 2007 shall
71 be eleven thousand dollars. The taxable wage base for calendar year 2008
72 shall be twelve thousand dollars. The state taxable wage base for each
73 calendar year thereafter shall be determined by the average balance of the
74 unemployment compensation trust fund of the four preceding calendar
75 quarters (September thirtieth, June thirtieth, March thirty-first, and December
76 thirty first of the preceding calendar year), less any outstanding federal Title
77 XII advances received pursuant to section 288.330, less the principal, interest,
78 and administrative expenses related to any credit instrument issued under
79 section 288.030, and less the principal, interest, and administrative expenses
80 related to any financial agreements under subdivision (17) of subsection 2 of
81 section 288.330. When the average balance of the unemployment
82 compensation trust fund of the four preceding quarters (September thirtieth,
83 June thirtieth, March thirty first, and December thirty first of the preceding
84 calendar year), as so determined is:

85 (1) Less than, or equal to, three hundred fifty million dollars, then the
86 wage base shall increase by one thousand dollars; or

87 (2) Six hundred fifty million or more, then the state taxable wage base
88 for the subsequent calendar year shall be decreased by five hundred dollars. In
89 no event, however, shall the state taxable wage base increase beyond twelve
90 thousand five hundred dollars, or decrease to less than seven thousand dollars.
91 For calendar year 2009, the tax wage base shall be twelve thousand five
92 hundred dollars. For calendar year 2010 and each calendar year thereafter, in
93 no event shall the state taxable wage base increase beyond thirteen thousand
94 dollars, or decrease to less than seven thousand dollars.—

95
96 ~~For any calendar year, the state taxable wage base shall not be reduced to less~~
97 ~~than that part of the remuneration which is subject to a tax under a federal law~~
98 ~~imposing a tax against which credit may be taken for contributions required to~~
99 ~~be paid into a state unemployment compensation trust fund. Nothing in this~~
100 ~~section shall be construed to prevent the wage base from increasing or~~
101 ~~decreasing by increments of five hundred dollars.]~~

288.036. 1. "Wages" means all remuneration, payable or paid, for personal services
2 including commissions and bonuses and, except as provided in subdivision (7) of this
3 [section] subsection, the cash value of all remuneration paid in any medium other than cash.

4 Gratuities, including tips received from persons other than the employing unit, shall be
5 considered wages only if required to be reported as wages pursuant to the Federal
6 Unemployment Tax Act, 26 U.S.C. Section ~~[3306]~~ **3301 et seq., as amended**, and shall be,
7 for the purposes of this chapter, treated as having been paid by the employing unit.
8 ~~[Severance pay shall be considered as wages to the extent required pursuant to the Federal~~
9 ~~Unemployment Tax Act, 26 U.S.C. Section 3306(b).]~~ Vacation pay, **termination pay,**
10 **severance pay,** and holiday pay shall be considered as wages for the week with respect to
11 which it is payable. **The total amount of wages derived from severance pay, termination**
12 **pay, vacation pay, or holiday pay, if paid to an insured in a lump sum, shall be prorated**
13 **on a weekly basis at the rate of pay received by the insured at the time of termination for**
14 **the purposes of determining unemployment benefits eligibility.** The term "wages" shall
15 not include:

16 (1) The amount of any payment made (including any amount paid by an employing
17 unit for insurance or annuities, or into a fund, to provide for any such payment) to, or on
18 behalf of, an individual under a plan or system established by an employing unit which makes
19 provision generally for individuals performing services for it or for a class or classes of such
20 individuals, on account of:

21 (a) Sickness or accident disability, but in case of payments made to an employee or
22 any of the employee's dependents this paragraph shall exclude from the term wages only
23 payments which are received pursuant to a workers' compensation law; or

24 (b) Medical and hospitalization expenses in connection with sickness or accident
25 disability; or

26 (c) Death;

27 (2) The amount of any payment on account of sickness or accident disability, or
28 medical or hospitalization expenses in connection with sickness or accident disability, made
29 by an employing unit to, or on behalf of, an individual performing services for it after the
30 expiration of six calendar months following the last calendar month in which the individual
31 performed services for such employing unit;

32 (3) The amount of any payment made by an employing unit to, or on behalf of, an
33 individual performing services for it or his or her beneficiary:

34 (a) From or to a trust described in 26 U.S.C. Section 401(a) which is exempt from tax
35 pursuant to 26 U.S.C. Section 501(a) at the time of such payment unless such payment is
36 made to an employee of the trust as remuneration for services rendered as such an employee
37 and not as a beneficiary of the trust; or

38 (b) Under or to an annuity plan which, at the time of such payments, meets the
39 requirements of Section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Section
40 404);

41 (4) The amount of any payment made by an employing unit (without deduction from
42 the remuneration of the individual in employment) of the tax imposed pursuant to Section
43 3101 of the Federal Internal Revenue Code (26 U.S.C.A. Section 3101) upon an individual
44 with respect to remuneration paid to an employee for domestic service in a private home or
45 for agricultural labor;

46 (5) Remuneration paid in any medium other than cash to an individual for services
47 not in the course of the employing unit's trade or business;

48 (6) Remuneration paid in the form of meals provided to an individual in the service of
49 an employing unit where such remuneration is furnished on the employer's premises and at
50 the employer's convenience, except that remuneration in the form of meals that is considered
51 wages and required to be reported as wages pursuant to the Federal Unemployment Tax Act,
52 26 U.S.C. Section ~~[3306]~~ **3301 et seq., as amended**, shall be reported as wages as required
53 thereunder;

54 (7) For the purpose of determining wages paid for agricultural labor as defined in
55 paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service
56 as defined in subsection 13 of section 288.034, only cash wages paid shall be considered;

57 (8) Beginning on October 1, 1996, any payment to, or on behalf of, an employee or
58 the employee's beneficiary under a cafeteria plan, if such payment would not be treated as
59 wages pursuant to the Federal Unemployment Tax Act.

60 2. The increases or decreases to the state taxable wage base for the remainder of
61 calendar year 2004 shall be eight thousand dollars, and the state taxable wage base in calendar
62 year 2005, and each calendar year thereafter, shall be determined by the provisions within this
63 subsection. On January 1, 2005, the state taxable wage base for calendar year 2005, 2006,
64 and 2007 shall be eleven thousand dollars. The taxable wage base for calendar year 2008
65 shall be twelve thousand dollars. The state taxable wage base for each calendar year
66 thereafter shall be determined by the average balance of the unemployment compensation
67 trust fund of the four preceding calendar quarters (September thirtieth, June thirtieth, March
68 thirty-first, and December thirty-first of the preceding calendar year), less any outstanding
69 federal Title XII advances received pursuant to section 288.330, less the principal, interest,
70 and administrative expenses related to any credit instrument issued under section ~~[288.030]~~
71 **288.330**, and less the principal, interest, and administrative expenses related to any financial
72 agreements under subdivision (17) of subsection 2 of section 288.330. When the average
73 balance of the unemployment compensation trust fund of the four preceding quarters
74 (September thirtieth, June thirtieth, March thirty-first, and December thirty-first of the
75 preceding calendar year), as so determined is:

76 (1) Less than, or equal to, three hundred fifty million dollars, then the wage base shall
77 increase by one thousand dollars; or

78 (2) Six hundred fifty million or more, then the state taxable wage base for the
79 subsequent calendar year shall be decreased by five hundred dollars. In no event, however,
80 shall the state taxable wage base increase beyond twelve thousand five hundred dollars, or
81 decrease to less than seven thousand dollars. For calendar year 2009, the tax wage base shall
82 be twelve thousand five hundred dollars. For calendar year 2010 and each calendar year
83 thereafter, in no event shall the state taxable wage base increase beyond thirteen thousand
84 dollars, or decrease to less than seven thousand dollars.

85

86 For any calendar year, the state taxable wage base shall not be reduced to less than that part of
87 the remuneration which is subject to a tax under a federal law imposing a tax against which
88 credit may be taken for contributions required to be paid into a state unemployment
89 compensation trust fund. Nothing in this section shall be construed to prevent the wage base
90 from increasing or decreasing by increments of five hundred dollars.

2 ~~[288.060. 1. All benefits shall be paid through employment offices in
accordance with such regulations as the division may prescribe.~~

3 ~~2. Each eligible insured worker who is totally unemployed in any
4 week shall be paid for such week a sum equal to his or her weekly benefit
5 amount.~~

6 ~~3. Each eligible insured worker who is partially unemployed in any
7 week shall be paid for such week a partial benefit. Such partial benefit shall be
8 an amount equal to the difference between his or her weekly benefit amount
9 and that part of his or her wages for such week in excess of twenty dollars,
10 and, if such partial benefit amount is not a multiple of one dollar, such amount
11 shall be reduced to the nearest lower full dollar amount. For calendar year
12 2007 and each year thereafter, such partial benefit shall be an amount equal to
13 the difference between his or her weekly benefit amount and that part of his or
14 her wages for such week in excess of twenty dollars or twenty percent of his or
15 her weekly benefit amount, whichever is greater, and, if such partial benefit
16 amount is not a multiple of one dollar, such amount shall be reduced to the
17 nearest lower full dollar amount. Pay received by an eligible insured worker
18 who is a member of the organized militia for training or duty authorized by
19 Section 502(a)(1) of Title 32, United States Code, shall not be considered
20 wages for the purpose of this subsection.~~

21 ~~4. The division shall compute the wage credits for each individual by
22 crediting him or her with the wages paid to him or her for insured work during
23 each quarter of his or her base period or twenty six times his or her weekly
24 benefit amount, whichever is the lesser. In addition, if a claimant receives
25 wages in the form of termination pay or severance pay and such payment
26 appears in a base period established by the filing of an initial claim, the
27 claimant may, at his or her option, choose to have such payment included in
28 the calendar quarter in which it was paid or choose to have it prorated equally
29 among the quarters comprising the base period of the claim. For the purpose
30 of this section, wages shall be counted as wage credits for any benefit year,~~

31 only if such benefit year begins subsequent to the date on which the employing
32 unit by whom such wages were paid has become an employer. The wage
33 credits of an individual earned during the period commencing with the end of a
34 prior base period and ending on the date on which he or she filed an allowed
35 initial claim shall not be available for benefit purposes in a subsequent benefit
36 year unless, in addition thereto, such individual has subsequently earned either
37 wages for insured work in an amount equal to at least five times his or her
38 current weekly benefit amount or wages in an amount equal to at least ten
39 times his or her current weekly benefit amount.

40 5. The duration of benefits payable to any insured worker during any
41 benefit year shall be limited to:

42 (1) ~~Twenty weeks if the Missouri average unemployment rate is nine~~
43 ~~percent or higher;~~

44 (2) ~~Nineteen weeks if the Missouri average unemployment rate is~~
45 ~~between eight and one half percent and nine percent;~~

46 (3) ~~Eighteen weeks if the Missouri average unemployment rate is eight~~
47 ~~percent up to and including eight and one-half percent;~~

48 (4) ~~Seventeen weeks if the Missouri average unemployment rate is~~
49 ~~between seven and one half percent and eight percent;~~

50 (5) ~~Sixteen weeks if the Missouri average unemployment rate is seven~~
51 ~~percent up to and including seven and one half percent;~~

52 (6) ~~Fifteen weeks if the Missouri average unemployment rate is~~
53 ~~between six and one half percent and seven percent;~~

54 (7) ~~Fourteen weeks if the Missouri average unemployment rate is six~~
55 ~~percent up to and including six and one half percent;~~

56 (8) ~~Thirteen weeks if the Missouri average unemployment rate is~~
57 ~~below six percent.—~~

58
59 As used in this subsection, the phrase "Missouri average unemployment rate"
60 means the average of the seasonally adjusted statewide unemployment rates as
61 published by the United States Department of Labor, Bureau of Labor
62 Statistics, for the time periods of January first through March thirty first and
63 July first through September thirtieth. The average of the seasonally adjusted
64 statewide unemployment rates for the time period of January first through
65 March thirty first shall be effective on and after July first of each year and
66 shall be effective through December thirty first. The average of the seasonally
67 adjusted statewide unemployment rates for the time period of July first
68 through September thirtieth shall be effective on and after January first of each
69 year and shall be effective through June thirtieth; and

70 (9) The provisions of this subsection shall become effective January 1,
71 2016.

72 6. In the event that benefits are due a deceased person and no petition
73 has been filed for the probate of the will or for the administration of the estate
74 of such person within thirty days after his or her death, the division may by
75 regulation provide for the payment of such benefits to such person or persons
76 as the division finds entitled thereto and every such payment shall be a valid
77 payment to the same extent as if made to the legal representatives of the
78 deceased.

79 7. ~~The division is authorized to cancel any benefit warrant remaining~~
 80 ~~outstanding and unpaid one year after the date of its issuance and there shall be~~
 81 ~~no liability for the payment of any such benefit warrant thereafter.~~

82 8. ~~The division may establish an electronic funds transfer system to~~
 83 ~~transfer directly to claimants' accounts in financial institutions benefits payable~~
 84 ~~to them pursuant to this chapter. To receive benefits by electronic funds~~
 85 ~~transfer, a claimant shall satisfactorily complete a direct deposit application~~
 86 ~~form authorizing the division to deposit benefit payments into a designated~~
 87 ~~checking or savings account. Any electronic funds transfer system created~~
 88 ~~pursuant to this subsection shall be administered in accordance with~~
 89 ~~regulations prescribed by the division.~~

90 9. ~~The division may issue a benefit warrant covering more than one~~
 91 ~~week of benefits.~~

92 10. ~~Prior to January 1, 2005, the division shall institute procedures~~
 93 ~~including, but not limited to, name, date of birth, and Social Security~~
 94 ~~verification matches for remote claims filing via the use of telephone or the~~
 95 ~~internet in accordance with such regulations as the division shall prescribe. At~~
 96 ~~a minimum, the division shall verify the Social Security number and date of~~
 97 ~~birth when an individual claimant initially files for unemployment insurance~~
 98 ~~benefits. If verification information does not match what is on file in division~~
 99 ~~databases to what the individual is stating, the division shall require the~~
 100 ~~claimant to submit a division approved form requesting an affidavit of~~
 101 ~~eligibility prior to the payment of additional future benefits. The division of~~
 102 ~~employment security shall cross-check unemployment compensation~~
 103 ~~applicants and recipients with Social Security Administration data~~
 104 ~~maintained by the federal government at least weekly. The division of~~
 105 ~~employment security shall cross-check at least monthly unemployment~~
 106 ~~compensation applicants and recipients with department of revenue drivers~~
 107 ~~license databases.]~~

288.060. 1. All benefits shall be paid through employment offices in accordance with
 2 such regulations as the division may prescribe.

3 2. Each eligible insured worker who is totally unemployed in any week shall be paid
 4 for such week a sum equal to his or her weekly benefit amount.

5 3. Each eligible insured worker who is partially unemployed in any week shall be
 6 paid for such week a partial benefit. Such partial benefit shall be an amount equal to the
 7 difference between his or her weekly benefit amount and that part of his or her wages for such
 8 week in excess of twenty dollars, and, if such partial benefit amount is not a multiple of one
 9 dollar, such amount shall be reduced to the nearest lower full dollar amount. For calendar
 10 year 2007 and each year thereafter, such partial benefit shall be an amount equal to the
 11 difference between his or her weekly benefit amount and that part of his or her wages for such
 12 week in excess of twenty dollars or twenty percent of his or her weekly benefit amount,
 13 whichever is greater, and, if such partial benefit amount is not a multiple of one dollar, such
 14 amount shall be reduced to the nearest lower full dollar amount. ~~[Termination pay, severance~~

15 ~~pay, or~~ Pay received by an eligible insured worker who is a member of the organized militia
16 for training or duty authorized by Section 502(a)(1) of Title 32, United States Code, shall not
17 be considered wages for the purpose of this subsection.

18 4. The division shall compute the wage credits for each individual by crediting him or
19 her with the wages paid to him or her for insured work during each quarter of his or her base
20 period or twenty-six times his or her weekly benefit amount, whichever is the lesser. In
21 addition, if a claimant receives wages in the form of **vacation pay, holiday pay**, termination
22 pay, or severance pay and such payment appears in a base period established by the filing of
23 an initial claim, the claimant may, at his or her option, choose to have such payment included
24 in the calendar quarter in which it was paid or choose to have it prorated equally among the
25 quarters comprising the base period of the claim. The maximum total amount of benefits
26 payable to any insured worker during any benefit year shall not exceed twenty times his or her
27 weekly benefit amount, or thirty-three and one-third percent of his or her wage credits,
28 whichever is the lesser. For the purpose of this section, wages shall be counted as wage
29 credits for any benefit year, only if such benefit year begins subsequent to the date on which
30 the employing unit by whom such wages were paid has become an employer. The wage
31 credits of an individual earned during the period commencing with the end of a prior base
32 period and ending on the date on which he or she filed an allowed initial claim shall not be
33 available for benefit purposes in a subsequent benefit year unless, in addition thereto, such
34 individual has subsequently earned either wages for insured work in an amount equal to at
35 least five times his or her current weekly benefit amount or wages in an amount equal to at
36 least ten times his or her current weekly benefit amount.

37 5. In the event that benefits are due a deceased person and no petition has been filed
38 for the probate of the will or for the administration of the estate of such person within thirty
39 days after his or her death, the division may by regulation provide for the payment of such
40 benefits to such person or persons as the division finds entitled thereto and every such
41 payment shall be a valid payment to the same extent as if made to the legal representatives of
42 the deceased.

43 6. The division is authorized to cancel any benefit warrant remaining outstanding and
44 unpaid one year after the date of its issuance and there shall be no liability for the payment of
45 any such benefit warrant thereafter.

46 7. The division may establish an electronic funds transfer system to transfer directly
47 to claimants' accounts in financial institutions benefits payable to them pursuant to this
48 chapter. To receive benefits by electronic funds transfer, a claimant shall satisfactorily
49 complete a direct deposit application form authorizing the division to deposit benefit
50 payments into a designated checking or savings account. Any electronic funds transfer

51 system created pursuant to this subsection shall be administered in accordance with
52 regulations prescribed by the division.

53 8. The division may issue a benefit warrant covering more than one week of benefits.

54 9. Prior to January 1, 2005, the division shall institute procedures including, but not
55 limited to, name, date of birth, and Social Security verification matches for remote claims
56 filing via the use of telephone or the internet in accordance with such regulations as the
57 division shall prescribe. At a minimum, the division shall verify the Social Security number
58 and date of birth when an individual claimant initially files for unemployment insurance
59 benefits. If verification information does not match what is on file in division databases to
60 what the individual is stating, the division shall require the claimant to submit a division-
61 approved form requesting an affidavit of eligibility prior to the payment of additional future
62 benefits. The division of employment security shall cross-check unemployment
63 compensation applicants and recipients with Social Security Administration data
64 maintained by the federal government at least weekly. The division of employment
65 security shall cross-check at least monthly unemployment compensation applicants and
66 recipients with department of revenue drivers license databases.

✓