

SECOND REGULAR SESSION

SENATE BILL NO. 734

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FOSTER.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3152S.011

AN ACT

To repeal sections 288.036, 288.038, 288.040, 288.050, 288.060, 288.121, 288.122, and 288.290, RSMo, and to enact in lieu thereof eight new sections relating to unemployment insurance.

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

Section A. Sections 288.036, 288.038, 288.040, 288.050, 288.060, 288.121, 288.122, and 288.290, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 288.036, 288.038, 288.040, 288.050, 288.060, 288.121, 288.122, and 288.290, to read as follows:

288.036. 1. "Wages" means all remuneration, payable or paid, for personal services including commissions and bonuses and, except as provided in subdivision [(8)] (7) of this section, the cash value of all remuneration paid in any medium other than cash. Gratuities, including tips received from persons other than the employing unit, shall be considered wages only if required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the purposes of this chapter, treated as having been paid by the employing unit. Severance pay shall be considered as wages [to the extent required pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Section 3306(b)]. Vacation pay and holiday pay shall be considered as wages for the week with respect to which it is payable. The term "wages" shall not include:

(1) [For the purposes of determining the amount of contributions due and contribution rates, that part of the remuneration for employment paid to an individual by an employer or the employer's predecessors which is in excess of seven thousand dollars for the calendar years 1988 through 1992, seven thousand five hundred dollars for the calendar year 1993, eight thousand five hundred dollars for the calendar years 1994, 1995 and 1996, eight thousand dollars for calendar year 1997, and eight thousand five hundred dollars for the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

calendar year 1998, and the state taxable wage base as determined in subsection 2 of this section for calendar year 1999, and each calendar year thereafter, unless that part of the remuneration is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; except that:

(a) In addition to the taxable wage, as defined in this subdivision, if on December 31, 1995, or on any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is less than one hundred million dollars, then the amount of the taxable wage then in effect shall be increased by five hundred dollars for all succeeding calendar years;

(b) If on December 31, 1995, or any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is two hundred and fifty million dollars or more, then the amount of the taxable wage then in effect shall be reduced by five hundred dollars, but not below that part of the remuneration which is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

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

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

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

(c) Death;

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

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

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

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

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

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

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

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

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

2. The increases or decreases to the state taxable wage base for calendar year [1999] **2005**, and each calendar year thereafter, shall be determined by the provisions within this subsection. **Upon the effective date of this section**, the state taxable wage base for calendar year [1999, and] **2005 shall be ten thousand dollars. The state taxable wage base for** each calendar year thereafter[,] shall be determined by the preceding September thirtieth balance of the unemployment compensation trust fund, less any outstanding federal Title XII advances received pursuant to section 288.330 **and the principal, interest, and administrative expenses related to bonds issued pursuant to section 288.330**. When the September thirtieth unemployment compensation trust fund balance, less any outstanding federal Title XII advances received pursuant to section 288.330, is:

(1) Less than, or equal to, [three] **five** hundred million dollars, then the wage base shall increase by [five hundred] **one thousand** dollars; or

(2) [Four hundred fifty] **Eight hundred** million or more, then the state taxable wage base for the subsequent calendar year shall be decreased by five hundred dollars. In no event, however, shall the state taxable wage base [increase beyond ten thousand five hundred dollars, or] decrease to less than seven thousand dollars.

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

288.038. 1. With respect to initial claims filed [during calendar years 1998, 1999, 2000 and 2001] **after the effective date of this section** and each calendar year thereafter, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed [two hundred five dollars in the calendar year 1998, two hundred twenty dollars in the calendar year 1999, two hundred thirty-five dollars in the calendar year 2000, and] **two hundred fifty dollars in the calendar [year 2001, and] years 2004 and 2005, two hundred fifty-five dollars for calendar years 2006 and 2007, and two hundred sixty dollars for calendar year 2008 and** each calendar year thereafter. If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

2. If the unemployment trust fund established in section 288.290 becomes insolvent, the maximum weekly benefit amount shall not be increased until twenty-four months following such time as the fund is again solvent.

288.040. 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, pursuant to this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended); or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended at the discretion of the director. **Such extension of the**

eight-week period shall not apply if the requesting employer has a base contribution rate of six percent; or

(c) The claimant is participating in a state-approved drug or alcohol treatment program;

(3) The claimant has reported in person to an office of the division as directed by the deputy, but at least once every four weeks, except that a claimant shall be exempted from the reporting requirement of this subdivision if:

(a) The claimant is claiming benefits in accordance with division regulations dealing with partial or temporary total unemployment; or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; or

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

(d) The director of the division of employment security has determined that the claimant belongs to a group or class of workers whose opportunities for reemployment will not be enhanced by reporting in person, or is prevented from reporting due to emergency conditions that limit access by the general public to an office that serves the area where the claimant resides, but only during the time such circumstances exist.

Ineligibility pursuant to this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which the claimant claims benefits he **or she** has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. [The one-week waiting period shall become compensable after unemployment during which benefits are payable for nine consecutive weeks.] No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which the claimant claims benefits;

(5) The claimant has made a claim for benefits;

(6) The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for

which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work.

3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of section 288.034, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law; except that:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services performed in any capacity (other than instructional, research, or principal administrative capacity) for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform such services in the second of such academic years or terms;

(c) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services immediately following such vacation period or holiday recess;

(d) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits payable on the basis of services in any such capacity shall be denied as specified in paragraphs (a), (b), and (c) of this subdivision, to any individual who performed such services at an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(2) If compensation is denied for any week pursuant to paragraph (b) or (d) of subdivision (1) of this subsection, to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative

capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work benefits for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:

(a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;

(b) A governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; but, except for such payments made pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), the provisions of this paragraph shall not apply if the services performed for such employer by the claimant after the beginning of the base period (or remuneration for such services) do not affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity or similar payment.

(2) If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one dollar, such amount shall be lowered to the next multiple of one dollar.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant to such federal law shall be deductible from the amount of benefits received pursuant to this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he or she has received or is seeking unemployment benefits pursuant to an unemployment insurance law of another state or the United States; provided, that if it be finally determined that the claimant is not entitled to such unemployment benefits, such ineligibility shall not apply.

6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds that such claimant's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute in the factory, establishment or other premises in which such claimant is or was last employed. In the event the claimant secures other employment from which he or she is separated during the existence of the labor

dispute, the claimant must have obtained bona fide employment as a permanent employee for at least the major part of each of two weeks in such subsequent employment to terminate his or her ineligibility. If, in any case, separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment or other premises. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

(a) The claimant is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

8. Benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be disqualified for waiting week credit or benefits until after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state equal to ten times the claimant's weekly benefit amount if the deputy finds:

(1) That the claimant has left work voluntarily without good cause attributable to such work or to the claimant's employer; except that the claimant shall not be disqualified:

(a) If the deputy finds the claimant quit such work for the purpose of accepting a more remunerative job which the claimant did accept and earn some wages therein;

(b) If the claimant quit temporary work to return to such claimant's regular employer;
or

(c) If the deputy finds the individual quit work, which would have been determined not suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within twenty-eight calendar days of the first day worked; or

(d) As to initial claims filed after December 31, 1988, if the claimant presents evidence supported by competent medical proof that she was forced to leave her work because of pregnancy, notified her employer of such necessity as soon as practical under the circumstances, and returned to that employer and offered her services to that employer as soon as she was physically able to return to work, as certified by a licensed and practicing physician, but in no event later than ninety days after the termination of the pregnancy. An employee shall have been employed for at least one year with the same employer before she may be provided benefits pursuant to the provisions of this paragraph;

(2) That the claimant has retired pursuant to the terms of a labor agreement between the claimant's employer and a union duly elected by the employees as their official representative or in accordance with an established policy of the claimant's employer; or

(3) That the claimant failed without good cause either to apply for available suitable work when so directed by the deputy, or to accept suitable work when offered the claimant, either through the division or directly by an employer by whom the individual was formerly employed, or to return to the individual's customary self-employment, if any, when so directed by the deputy.

(a) In determining whether or not any work is suitable for an individual, the division shall consider, among other factors and in addition to those enumerated in paragraph (b) of this subdivision, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment, the individual's prospects for securing work in the individual's customary occupation, the distance of available work from the

individual's residence and the individual's prospect of obtaining local work; except that, if an individual has moved from the locality in which the individual actually resided when such individual was last employed to a place where there is less probability of the individual's employment at such individual's usual type of work and which is more distant from or otherwise less accessible to the community in which the individual was last employed, work offered by the individual's most recent employer if similar to that which such individual performed in such individual's last employment and at wages, hours, and working conditions which are substantially similar to those prevailing for similar work in such community, or any work which the individual is capable of performing at the wages prevailing for such work in the locality to which the individual has moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable for the individual;

(b) Notwithstanding any other provisions of this law, no work shall be deemed suitable and benefits shall not be denied pursuant to this law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

b. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

2. Notwithstanding the other provisions of this law, if a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant, depending upon the seriousness of the misconduct as determined by the deputy according to the circumstances in each case, shall be disqualified for waiting week credit or benefits for not less than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise eligible. In addition to the disqualification for benefits pursuant to this provision the division:

(1) Shall reduce the claimant's benefit balance as of the effective date of the disqualification by an amount equal to the number of penalty weeks assessed multiplied by the claimant's weekly benefit amount; and

(2) May in the more aggravated cases of misconduct, cancel all or any part of the individual's wage credits, which were established through the individual's employment by the employer who discharged such individual, according to the seriousness of the misconduct. A disqualification provided for pursuant to this subsection shall not apply to any week which occurs after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state in an amount equal to eight times the claimant's weekly benefit amount.

3. A pattern of absenteeism or tardiness may constitute misconduct regardless of

whether the last incident alone which results in the discharge constitutes misconduct.

4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be determined to be disqualified for benefits because the claimant is in training approved pursuant to section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left work which was not "suitable employment" to enter such training. For the purposes of this subsection "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than eighty percent of the worker's average weekly wage as determined for the purposes of the Trade Act of 1974.

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

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

3. Each eligible insured worker who is partially unemployed in any week shall be paid for such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his **or her** weekly benefit amount and that part of his **or her** wages for such week in excess of twenty dollars **or twenty percent of his or her weekly benefit amount, whichever is greater**, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount. [Termination pay, severance pay or] **Beginning January 1, 2005, and for each calendar year thereafter, severance pay shall be reportable and deductible as wages for purposes of this subsection.** Pay received by an eligible insured worker who is a member of the organized militia for training or duty authorized by section 502(a)(1) of Title 32, United States Code, [or who is an elected official] shall not be considered wages for the purpose of this subsection.

4. The division shall compute the wage credits for each individual by crediting him **or her** with the wages paid to him **or her** for insured work during each quarter of his **or her** base period or twenty-six times his **or her** weekly benefit amount, whichever is the lesser. In addition, if a claimant receives wages in the form of termination pay or severance pay and such payment appears in a base period established by the filing of an initial claim, the claimant may, at his **or her** option, choose to have such payment included in the calendar quarter in which it was paid or choose to have it prorated equally among the quarters comprising the base period of the claim. The maximum total amount of benefits payable to any insured worker during any benefit year shall not exceed twenty-six times his **or her** weekly benefit amount, or thirty-three and one-third percent of his **or her** wage credits, whichever is the lesser. For the purpose of this section, wages shall be counted as wage credits for any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has become an employer. The wage

credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which he **or she** filed an allowed initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned either wages for insured work in an amount equal to at least five times his **or her** current weekly benefit amount or wages in an amount equal to at least ten times his **or her** current weekly benefit amount.

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

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

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

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

288.121. 1. On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is less than **[four] seven** hundred million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be increased by the percentage determined from the following table:

Balance in Trust Fund		Percentage of Increase
Less Than	Equals or Exceeds	
[\$400,000,000] \$700,000,000	[\$350,000,000] \$600,000,000	10%
[\$350,000,000] \$600,000,000	[\$300,000,000] \$400,000,000	20%
[\$300,000,000] \$400,000,000		30%

Notwithstanding the table in this section, each employer's contribution rate calculated for the four calendar quarters of calendar year **[1994] 2005** shall be increased by forty percent, instead of thirty percent, as previously indicated in the table in this section. After the forty

percent increase, each employer's contribution rate for the four calendar quarters of calendar year [1994] **2005** shall be increased by adding three-tenths of one percent.

2. Beginning with calendar year 2005 and for each calendar year thereafter until such time as the amount of contributions to the fund for the twelve-month period ending June thirtieth of the preceding calendar year equals or exceeds the amount of benefits paid from the fund for the same period, employers shall have a total contribution rate equal to the base rate multiplied by the contribution rate adjustment, plus a temporary solvency charge. The temporary solvency charge shall be:

(1) For employers with base contribution rates of zero to two and seven-tenths percent, three-tenths of one percent;

(2) For employers with base contribution rates of more than two and seven-tenths percent but less than six percent, one-half of one percent; and

(3) For employers with base contribution rates of six percent or more, seven-tenths of one percent.

288.122. On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is more than [five] **nine** hundred million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be decreased by the percentage determined from the following table:

Balance in Trust Fund		Percentage
More Than	But Less Than	of Decrease
[\$500,000,000] \$900,000,000	[\$600,000,000] \$1,000,000,000	7%
[\$600,000,000] \$1,000,000,000		12%

Notwithstanding the table in this section, if the balance in the unemployment insurance compensation trust fund as calculated in this section is more than [six hundred million] **one billion** dollars, the percentage of decrease of the employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be no greater than ten percent for any employer whose calculated contribution rate under section 288.120 is six percent or greater.

288.290. 1. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an "Unemployment Compensation Fund", which shall be administered by the division exclusively for the purposes of this law. This fund shall consist of:

- (1) All contributions and payments in lieu of contributions collected under this law;
- (2) Interest earned upon any moneys in the fund;

(3) Any property or securities acquired through the use of moneys belonging to the fund;

(4) All earnings of such property or securities;

(5) All voluntary contributions permitted under the law; and

(6) All funds set aside or appropriated by the Congress of the United States or any federal agency, to be deposited to the fund. All moneys in the funds shall be mingled and undivided, except that all money credited to this state's account in the Unemployment Trust Fund pursuant to Section 903 of the Social Security Act, as amended, and which has been appropriated for expenses of administration, shall be used only for the purposes set out in subsection 5 of this section and shall not be included in the cash balance in the unemployment compensation fund for the purposes of sections 288.100 and 288.113 to 288.126.

2. The director shall designate a treasurer and custodian of the fund and he **or she** shall administer the fund and shall issue his **or her** warrants upon it in accordance with such regulations as the director shall prescribe. He **or she** shall maintain within the fund three separate accounts:

(1) A clearing account;

(2) An unemployment trust fund account; and

(3) A benefit account.

To ensure that employment trust fund moneys are not diverted for purposes other than those authorized, no other fund shall be established with increased employer taxes that are offset by a reduction of unemployment contributions.

3. All moneys payable to the fund, upon their receipt by the division, shall immediately be deposited in the clearing account. Refunds of contributions or payments made necessary under the provisions of sections 288.140 and 288.340 may be paid from the clearing account or the benefit account. After clearance, all moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of state moneys in the possession or custody of the state treasurer to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from the Missouri account in the federal Unemployment Trust Fund. Except as otherwise provided, moneys in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds but shall be maintained in separate accounts on the books of the depository bank. All funds required by this law to be

deposited in any state depository shall be secured by such depository to the same extent and in the same manner as is or may hereafter be required by section 30.270, RSMo, and all the amendments thereto; provided, that the division shall do those acts directed to be done by the governor, attorney general and state treasurer, or any of them, under section 30.270, RSMo, which are not inconsistent with the other provisions of this law. Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state, or, if combined, shall be first used to satisfy and make whole the accounts herein established. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount not to exceed twenty-five thousand dollars and in the form prescribed by law or approved by the attorney general. Premiums for such bonds shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

4. Moneys shall be requisitioned from the Missouri account in the federal Unemployment Trust Fund solely for the payment of benefits or for refunds of contributions or payments in lieu of contributions in accordance with regulations prescribed by the director, except that money credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection 5 of this section. The director shall from time to time requisition from the federal Unemployment Trust Fund such amounts, not exceeding the amounts standing to the Missouri account therein, as he deems necessary for the payment of benefits and refunds for a reasonable future period. Upon its receipt the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys belonging to this state in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the director or other duly authorized division representative. Any balance of moneys requisitioned from the federal Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the director, shall be redeposited with the Secretary of the Treasury of the United States of America to the credit of the Missouri account in the federal Unemployment Trust Fund as provided in subsection 3 of this section.

5. (1) Money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by

the legislature, provided that the expenses are incurred and the money is requisitioned as needed after the enactment of an appropriation law which:

(a) Specifies the purpose for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which the aggregate of the amount transferred to the account of this state in the Unemployment Trust Fund pursuant to subsections (a) and (b) of Section 903 of the Social Security Act, as amended, exceeds the aggregate of the amounts used by this state pursuant to this subsection and charged against the amounts transferred to the account of this state in the Unemployment Trust Fund.

(2) The use of the money referred to in subdivision (1) of this subsection shall be accounted for in accordance with standards established by the Secretary of Labor.

(3) For purposes of subdivision (1) of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(4) Money credited to the account of this state pursuant to Section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this subsection.

(5) Money appropriated as provided under subdivision (1) of this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the unemployment compensation administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment compensation fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(6) Money credited to the account of the state in the federal Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Title 42, Section 903 of the Social Security Act with respect to the federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the unemployment compensation program.

6. The provisions of subsections 1, 2, 3, 4, and 5 of this section, to the extent that they relate to the federal Unemployment Trust Fund, shall be operative only so long as such federal Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain a separate book account of all funds deposited therein by contributions from employers of this state for benefit purposes,

and by money credited pursuant to Section 903 of the Social Security Act, as amended, together with a proportionate share of the earnings apportioned to the Missouri account of such federal Unemployment Trust Fund, from which no other state is permitted to make or authorize withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties or securities in a manner approved by the director in accordance with the provisions of this law; provided, that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America, or securities on which the payment of principal and interest are guaranteed by the United States of America, and bonds or other interest-bearing obligations of the state of Missouri; and provided, further, that such investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director.

7. Notwithstanding any other provision of this law, any interest or penalties found to have been erroneously collected and which is ordered to be refunded shall, if paid into the unemployment compensation fund, be refunded out of the unemployment compensation fund and, if paid into the special employment security fund, shall be refunded out of the special employment security fund; except that, in the event any interest and penalties paid into the unemployment compensation fund shall be transferred to the special employment security fund, the refund of any such interest and penalties shall be made from the special employment security fund.

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