FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 319

93RD GENERAL ASSEMBLY

Reported from the Committee on Workforce Development and Workplace Safety, April 13, 2005 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 319 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1305L.05C

AN ACT

To repeal sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330, RSMo, and to enact in lieu thereof thirteen new sections relating to unemployment insurance.

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

Section A. Sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 288.035, 288.036, 288.038, 288.045, 288.050, 288.060, 288.110, 288.120, 288.121, 288.122, 288.128, 288.310, and 288.330, to read as follows:

288.035. Notwithstanding the provisions of section 288.034, **[**RSMo,**]** in the case of an individual who is the owner **as defined in section 301.010, RSMo,** and operator of a motor vehicle which is leased or contracted with driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in section 390.020 or 390.041, **RSMo,** or operating under a certificate issued by the **[**motor carrier and railroad safety division of the department of economic development**]** **Missouri department of transportation** under the provisions of this chapter or by the **[**interstate commerce commission**]** **United States Department of Transportation, or any of its subagencies**, such owner/operator shall not be deemed to be an employee, provided, however, such individual owner and operator shall be deemed to be in employment if the

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.

for-hire **[**common or contract vehicle**]** **motor** carrier is an organization described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

288.036. 1. "Wages" means all remuneration, payable or paid, for personal services including commissions and bonuses and, except as provided in subdivision (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) 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;

(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;

(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);

(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;

(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;

(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;

(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;

(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 the remainder of calendar year 2004 shall be eight thousand dollars, and the state taxable wage base in calendar year 2005, and each calendar year thereafter, shall be determined by the provisions within this subsection. On January 1, 2005, the state taxable wage base for calendar year 2005, 2006, and 2007 shall be eleven thousand dollars. **[**The taxable wage base for calendar year 2008, and each year thereafter, shall be twelve 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, or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements. When the September thirtieth unemployment compensation trust fund balance, or, 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 any outstanding federal Title XII advances received pursuant to section 288.330, is:

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

(2) Six hundred fifty 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 twelve thousand dollars, or decrease to less than seven thousand dollars. For calendar year 2009, the tax wage base shall be twelve thousand five hundred dollars. For calendar year 2010 and each calendar year thereafter,**]** In no event shall the state taxable wage base increase beyond thirteen thousand dollars, or decrease to less than seven thousand dollars. **In the first calendar year subsequent to the effective date of this section, when the September thirtieth balance in the unemployment compensation trust fund, less any outstanding federal Title XII advances received under section 288.330, or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements, equals or exceeds four hundred million dollars, the state taxable wage base for the next calendar year and each calendar year thereafter shall not increase beyond eleven 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 or decreasing by increments of five hundred dollars.

288.038. With respect to initial claims filed during calendar years 2004 and 2005, 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 fifty dollars in the calendar years 2004 and 2005. With respect to initial claims filed during calendar **[**years**] year** 2006 **[**and 2007**] and each calendar year thereafter,** the "maximum weekly benefit amount" means three and three-fourths percent of **the average of** the total wages paid to an eligible insured worker during **[**that quarter**] the two highest quarters** 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 seventy dollars in calendar year 2006 and the maximum weekly benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With respect to initial

claims filed during calendar year 2008 and each calendar year thereafter, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during the average of the two highest quarters of the worker's base period, but the maximum weekly benefit amount shall not exceed three hundred dollars in calendar year 2008, three hundred ten dollars in calendar year 2009, three hundred twenty dollars in calendar year 2010, and each calendar year thereafter**]**. **Beginning in calendar year 2006 and continuing each calendar year thereafter, the maximum weekly benefit amount shall not exceed two hundred fifty dollars if the balance of the unemployment compensation trust fund is less than or equal to four hundred million dollars. Beginning on January first of the year following the year in which the balance in the unemployment compensation trust fund exceeds four hundred million dollars, the maximum weekly benefit amount shall increase to two hundred seventy dollars. In each subsequent year in which the unemployment compensation trust fund balance exceeds four hundred million dollars the maximum weekly benefit amount shall increase by ten dollars, except in no case shall the weekly benefit amount increase beyond three hundred twenty dollars. For purposes of this section, the balance in the fund shall be determined to be the balance in the unemployment compensation trust fund on the preceding September thirtieth less any outstanding federal Title XII advances received under section 288.330, or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements.** If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

288.045. 1. If a claimant is at work with a detectible amount of alcohol or a controlled substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the employer's alcohol and controlled substance workplace policy, the claimant shall have committed misconduct connected with the claimant's work.

2. **[**For carboxy-tetrahydrocannabinol, a chemical test result of fifty nannograms per milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be considered a detectible amount.

3.**]** If the test is conducted by a laboratory certified by the United States Department of Transportation **or another accrediting organization, certifying organization, or professional society approved by the department**, the test results and the laboratory's trial packet shall be included in the administrative record and considered

as evidence.

[4.**] 3.** For this section to be applicable, the claimant must have previously been notified of the employer's alcohol and controlled substance workplace policy by conspicuously posting the policy in the workplace, by including the policy in a written personnel policy or handbook, or by statement of such policy in a collective bargaining agreement governing employment of the employee. The policy**, public posting, collective bargaining agreement, or other written notice provided to the employee** must state that a positive test result shall be deemed misconduct and may result in suspension or termination of employment.

[5. For this section to be applicable, testing**] 4. Test results** shall be **[**conducted only if sufficient cause exists to suspect alcohol or controlled substance use by the claimant. If sufficient cause exists to suspect prior alcohol or controlled substance use by the claimant, or**] admissible if** the employer's policy clearly states **[**that there will**] an employee may** be **subject to** random testing**[**, then testing of the claimant may be conducted randomly**]**.

[6.**] An employer may require a preemployment test for alcohol or controlled substance use as a condition of employment, and test results shall be admissible so long as the claimant was informed of the test requirement prior to taking the test. A random or preemployment test result, conducted under this section, which is positive for alcohol or controlled substance use shall be considered misconduct. A chemical test administered when sufficient cause exists to suspect alcohol or controlled substance use by the claimant, or when administered randomly under subsection 3 of this section or when administered prior to or as a condition of employment shall be deemed misconduct if such test result is positive for alcohol or a controlled substance.**

5. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by **[**subdivision (2) of**]** subsection 2 of section 288.050.

[7.**] 6.** The application **[**of the alcohol and controlled substance testing provisions**]** of this section **for alcohol and controlled substance testing, relating only to methods of testing, criteria for testing, chain of custody for samples or specimens, and due process or employee notification procedures** shall not apply in the event that the claimant is subject to the provisions of any applicable collective bargaining agreement, **[**which**] so long as such agreement** contains methods for alcohol or controlled substance testing **that meet or exceed the minimum standards established in this section**. Nothing in this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with Missouri or United States constitution, law, statute or regulation, including those imposed by the

Americans with Disabilities Act and the National Labor Relations Act.

[8.**] 7.** All specimen collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the United States Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40 **or another accrediting organization, certifying organization, or professional society approved by the department**. Any employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States Department of Transportation **or such other approved accrediting organization or professional society**. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

[9.**] 8.** For this section to be applicable, the employee may request that a confirmation test on the specimen be conducted. "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy. In the event that a confirmation test is requested, such shall be obtained from a separate, unrelated certified laboratory and shall be at the employee's expense only if said test confirms **initial** results **[**as specified in subsection 2 of this section**]**.

[10.**] 9.** Use of a controlled substance as defined under section 195.010, RSMo, under and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be misconduct connected with work for the purposes of this section.

[11.**] 10.** This section shall have no effect on employers who do not avail themselves of the requirements and regulations for alcohol and controlled drug testing determinations that are required to affirm misconduct connected with work findings.

[12.**] 11.** Any employer that initiates an alcohol and drug testing policy after January 1, 2005, shall ensure that at least sixty days elapse between a general one-time notice to all employees that an alcohol and drug testing workplace policy is being implemented and the effective date of the program.

[13.**] 12.** (1) In applying provisions of this chapter, it is the intent of the legislature to reject and abrogate previous case law interpretations of "misconduct connected with work" requiring a finding of evidence of impairment of work performance, including, but not limited to, the holdings contained in Baldor Electric Company v. Raylene Reasoner and Missouri Division of Employment Security, 66

S.W.3d 130 (Mo.App. E.D. 2001).

(2) In determining whether or not misconduct connected with work has occurred, neither the state, any agency of the state, nor any court of the state of Missouri shall require a finding of evidence of impairment of work performance.

13. A discharge relating to a claimant's refusal to take or attempt to adulterate a test for alcohol or controlled substances, as defined by section 195.010, RSMo, administered by or at the request of the employer shall be considered misconduct connected with the claimant's work. If a deputy finds that a claimant has been discharged under this subsection, such claimant shall be disqualified for waiting week credit and benefits under the provisions of section 288.050.

14. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by **[**subdivision (2) of**]** subsection 2 of section 288.050.

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. A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so. 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;

(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. An offer of work shall be rebuttably presumed if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service stating such offer to the claimant at the claimant's last known address. Nothing in this subdivision shall be construed to limit the means by which the deputy may establish that the claimant has or has not been sufficiently notified of available work.

(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. If a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant shall be disqualified for waiting week credit and benefits, and no benefits shall be paid nor shall the cost of any benefits be charged against any employer for any period of employment within the base period until the claimant has earned wages for work insured under the unemployment laws of this state or any other state as prescribed in this section. In addition to the disqualification for benefits pursuant to this provision the division 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 six times the claimant's weekly benefit amount. **Should a claimant be disqualified on a second or subsequent occasion within the base period the claimant shall be required to earn wages in an amount equal to or in excess of six times the claimant's weekly benefit amount for each disqualification, such additionally required wages shall run consecutively.**

3. Absenteeism or tardiness **[**may**]** **shall** constitute misconduct**,** regardless of whether the last incident alone constitutes misconduct**[**. In determining whether the degree of absenteeism or tardiness constitutes a pattern for which misconduct may be found, the division shall consider whether**], if** the discharge was the result of a violation of the employer's attendance policy, provided the employee had received knowledge of such policy prior to the occurrence of any absence or tardy upon which the discharge is based.

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, 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. For calendar year 2007 and each year thereafter, 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 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, 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.

9. Prior to January 1, 2005, the division shall institute procedures including, but not limited to, name, date of birth, and Social Security verification matches for remote claims filing via the use of telephone or the Internet in accordance with such regulations as the division shall prescribe. At a minimum, the division shall verify the Social Security number and date of birth when an individual claimant initially files for unemployment insurance benefits. If verification information does not match what is on file in division databases to what the individual is stating, the division shall require the claimant to submit a division-approved form requesting an affidavit of eligibility prior to the payment of additional future benefits. The division of employment security shall cross-check unemployment compensation applicants and recipients with Social Security Administration data maintained by the federal government on the most frequent basis recommended by the United States Department of Labor, or absent a recommendation, at least monthly. **Effective January 1, 2007,** the division of employment security shall cross-check at least monthly unemployment compensation applicants and recipients with department of revenue drivers license databases.

288.110. **1.** Any individual, type of organization or employing unit which has acquired substantially all of the business of an employer, excepting in any such case any assets retained by such employer incident to the liquidation of his obligations, and in respect to which the division finds that immediately after such change such business of the predecessor employer is continued without interruption solely by the successor, shall stand in the position of such predecessor employer in all respects, including the

predecessor's separate account, actual contribution and benefit experience, annual payrolls, and liability for current or delinquent contributions, interest and penalties. If two or more individuals, organizations, or employing units acquired at approximately the same time substantially all of the business of an employer (excepting in any such case any assets retained by such employer incident to the liquidation of his obligations) and in respect to which the division finds that immediately after such change all portions of such business of the predecessor are continued without interruption solely by such successors, each such individual, organization, or employing unit shall stand in the position of such predecessor with respect to the proportionate share of the predecessor's separate account, actual contribution and benefit experience and annual payroll as determined by the portion of the predecessor's taxable payroll applicable to the portion of the business acquired, and each such individual, organization or employing unit shall be liable for current or delinquent contributions, interest and penalties of the predecessor in the same relative proportion. Further, any successor under this section which was not an employer at the time the acquisition occurred shall pay contributions for the balance of the current rate year at the same contribution rate as the contribution rate of the predecessor whether such rate is more or less than two and seven-tenths percent, provided there was only one predecessor or there were only predecessors with identical rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date of acquisition applicable to the successor for the remainder of the rate year, which rate shall be based on the combined experience of all predecessor employers. In the event that any successor was, prior to an acquisition, an employer, and there is a difference in the contribution rate established for such calendar year applicable to any acquired or acquiring employer, the division shall make a recalculation of the contribution rate applicable to any successor employer based upon the combined experience of all predecessor and successor employers as of the date of the acquisition, unless the date of the acquisition is other than the first day of the calendar quarter. If the date of any such acquisition is other than the first day of the calendar quarter, the division shall make the recalculation of the rate on the first day of the next calendar quarter after the acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the successor employer shall use its rate for the calendar quarter in which the acquisition was made. The revised contribution rate shall apply to employment after the rate recalculation. For this purpose a calculation date different from July first may be established. When the division has determined that a successor or successors stand in the position of a predecessor employer, the predecessor's liability shall be terminated as of the date of the acquisition.

2. If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment

experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates and liabilities of both employers shall be recalculated and made effective under this section.

3. Whenever any individual, type of organization, or employing unit who is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such individual, organization, or employing unit if the division finds that such individual, organization, or employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such individual, organization, or employing unit shall be assigned the applicable new employer rate under section 288.090. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include the cost of acquiring the business, whether the individual, organization, or employing unit continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

4. (1) If an individual, organization, or employing unit knowingly violates or attempts to violate this section related to determining the assignment of a contribution rate, or if an individual, organization, or employing unit knowingly advises another individual, organization, or employing unit in a way that results in a violation of such provision, the individual, organization, or employing unit shall be subject to the following penalties:

(a) If the individual, organization, or employing unit is an employer under this chapter, then for the current year and the three rate years immediately following this rate year, such employer's base rate shall be the maximum base rate applicable to this type of employer, or the employer's current base rate plus two percent, whichever is greater.

(b) If the individual, organization, or employing unit is not an employer under this chapter, such individual, organization, or employing unit shall be subject to a civil money penalty of not more than five thousand dollars. Any such fine shall be deposited in the special employment security fund established under section 288.310, RSMo.

(2) In addition to the penalty imposed by subsection 4 of this section, any violation of this section may be prosecuted under section 288.395.

5. For purposes of this section, the following terms shall mean:

(1) "Base rate", the employer's contribution rate as determined by section 288.090, subsections 1, 2, and 3 of section 288.120, section 288.126, or a federal base

rate assignment;

(2) "Knowingly", having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved;

(3) "Violates or attempts to violate", includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

6. The division shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

7. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

8. This section shall become effective January 1, 2006.

288.120. 1. On each June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, the balance of an employer's experience rating account, except an employer participating in a shared work plan under section 288.500, shall determine his contribution rate for the following calendar year as determined by the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll

Equals or Exceeds	Less Than	Contribution Rate
-----	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%

-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%
10.0	10.5	1.3%
10.5	11.0	1.2

		%
11.0	11.5	1.1 %
11.5	12.0	1.0 %
12.0	12.5	0.9 %
12.5	13.0	0.8 %
13.0	13.5	0.6 %
13.5	14.0	0.4 %
14.0	14.5	0.3 %
14.5	15.0	0.2 %
15.0	----	0.0 %

2. Using the same mathematical principles used in constructing the table provided in subsection 1 of this section, the following table has been constructed. The contribution rate for the following calendar year of any employer participating in a shared work plan under section 288.500 during the current calendar year or any calendar year during a prior three-year period shall be determined from the balance in such employer's experience rating account as of the previous June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, from the following table:

Percentage the Employer's Experience Rating
Account is to that Employer's Average Annual Payroll

Equals or Exceeds	Less Than	Contribution Rate
-----	-27.0	9.0 %
-27.0	-26.0	8.8 %
-26.0	-25.0	8.6 %
-25.0	-24.0	8.4 %

-24.0	-23.0	8.2 %
-23.0	-22.0	8.0 %
-22.0	-21.0	7.8 %
-21.0	-20.0	7.6 %
-20.0	-19.0	7.4 %
-19.0	-18.0	7.2 %
-18.0	-17.0	7.0 %
-17.0	-16.0	6.8 %
-16.0	-15.0	6.6 %
-15.0	-14.0	6.4 %
-14.0	-13.0	6.2 %
-13.0	-12.0	6.0 %
-12.0	-11.0	5.8 %
-11.0	-10.0	5.6 %
-10.0	-9.0	5.4 %
-9.0	-8.0	5.2 %
-8.0	-7.0	5.0 %
-7.0	-6.0	4.8 %
-6.0	-5.0	4.6 %
-5.0	-4.0	4.4

-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%
10.0	10.5	1.3%

10.5	11.0	1.2%
11.0	11.5	1.1%
11.5	12.0	1.0%
12.0	12.5	0.9%
12.5	13.0	0.8%
13.0	13.5	0.6%
13.5	14.0	0.4%
14.0	14.5	0.3%
14.5	15.0	0.2%
15.0	----	0.0%

3. Notwithstanding the provisions of subsection 2 of section 288.090, any employer participating in a shared work plan under section 288.500 who has not had at least twelve calendar months immediately preceding the calculation date throughout which his account could have been charged with benefits shall have a contribution rate equal to the highest contribution rate in the table in subsection 2 of this section, until such time as his account has been chargeable with benefits for the period of time sufficient to enable him to qualify for a computed rate on the same basis as other employers participating in shared work plans.

4. Employers who have been taxed at the maximum rate pursuant to this section for two consecutive years shall have a surcharge of one-quarter percent added to their contribution rate calculated pursuant to this section **unless the balance in the trust fund as determined by section 288.038 is greater than or equal to four hundred fifty million dollars, then, no such surcharge shall be added**. In the event that an employer remains at the maximum rate pursuant to this section for a third or subsequent year, an additional surcharge of one-quarter percent shall be annually assessed **and if the balance in the trust fund as determined by section 288.038 remains less than or equal to four hundred fifty million dollars, then, an additional surcharge of one-quarter percent shall be assessed**, but in no case shall this surcharge cumulatively exceed **one-half of** one percent. **[**Additionally, if an employer continues to remain at the maximum

rate pursuant to this section an additional surcharge of one-half percent shall be assessed.**]** In no case shall the total surcharge assessed to any employer exceed **[**one and**]** one-half percent in any given year.

288.121. 1. On October first of each calendar year, if the average balance, less any federal advances, **or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements,** 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 hundred fifty 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
Less Than	Equals or Exceeds	of Increase
$450,000,000	$400,000,000	10%
$400,000,000	$350,000,000	20%
$350,000,000		30%

[For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying the maximum contribution rate shall be increased by forty percent, instead of thirty percent as previously indicated in the table in this section.**]**

2. For calendar years 2005, 2006, and 2007, an employer's total contribution rate shall equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the contribution rate plus the increase authorized under subsection 1 of this section. Any moneys overcollected beyond the actual administrative, interest and principal repayment costs for the credit instruments used shall be deposited into the state unemployment insurance trust fund and credited to the employer's experience account. The **[**temporary debt indebtedness assessment**] credit instrument and financing agreement emergency repayment fee** shall expire upon the last day of the fourth calendar quarter of **[**2007**] 2020 or whenever the balance of the unemployment compensation fund, less any federal advances or outstanding credit instruments, is greater than or equal to zero**.

288.122. On October first of each calendar year, if the average balance, less any

federal advances, **or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements,** 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**]** **six** 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

More Than	But Less Than	Percentage of Decrease
$600,000,000	$750,000,000	7%
$750,000,000		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 seven hundred fifty million 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.

288.128. 1. In addition to all other contributions due under this chapter, if the fund is utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., Section 1321 pursuant to section 288.330, or if the fund is not utilizing moneys advanced by the federal government, then from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced under financial agreements, each employer shall be assessed an amount solely for the payment of interest due on such federal advancements, or if the fund is not utilizing moneys advanced by the federal government, or in the case of issuance of credit instruments for the payment of the **[**principal,**]** interest**[**,**]** and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of **[**principal,**]** interest**[**,**]** and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of

[principal,**]** interest**[**,**]** and administrative expenses for both. The rate shall be determined by dividing the interest due on federal advancements or if the fund is not utilizing moneys advanced by the federal government, then the **[**principal,**]** interest**[**,**]** and administrative expenses related to credit instruments, or the **[**principal,**]** interest**[**,**]** and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the **[**principal,**]** interest**[**,**]** and administrative expenses related to a combination of credit instruments and financial agreements by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances, or if the fund is not utilizing moneys advanced by the federal government, then the payment of **[**principal,**]** interest**[**,**]** and administrative expenses related to credit instruments, or the payment of the **[**principal,**]** interest**[**,**]** and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the **[**principal,**]** interest**[**,**]** and administrative expenses related to a combination of credit instruments and financial agreements, shall be deposited in the special employment security fund.

2. If on December thirty-first of any year the money collected under this section exceeds the amount of interest due on federal advancements by one hundred thousand dollars or more, then each employer's experience rating account shall be credited with an amount which bears the same ratio to the excess moneys collected under this section as that employer's payment collected under this section bears to the total amount collected under this section. Further, if on December thirty-first of any year the moneys collected under this section exceed the amount of interest due on the federal advancements by less than one hundred thousand dollars, the balance shall be transferred from the special employment security fund to the Secretary of the Treasury of the United States to be credited to the account of this state in the unemployment trust fund.

3. **This subsection shall only be effective in any year in which, on January first of such year, the unemployment compensation trust fund does not have sufficient money to meet the minimum level of debt service required for the following twelve months, and only when the emergency fee authorized under this subsection is necessary to prevent default on outstanding debt obligations incurred as a result of payment of benefits required under this chapter.** In addition to all other contributions due under this chapter, if the fund is utilizing moneys from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section

288.330, or a combination of credit instrument proceeds and moneys advanced under financial agreements each employer shall be assessed a credit instrument and financing agreement **emergency** repayment **[**surcharge**] fee**. **[**The total of such surcharge shall be calculated as an amount up to one hundred fifty percent of the amount required in the twelve-month period following the due date for the payment of such surcharge for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both. Each employer's proportionate share shall be the product obtained by multiplying the total statewide credit instrument and financing agreement repayment surcharge by a number obtained by dividing the employer's total taxable wages for the prior year by the total taxable wages in the state for the prior year.**] The credit instrument and financing agreement emergency repayment fee shall be calculated as a percentage of the tax rate applied under this chapter. The credit instrument and financing agreement emergency repayment fee shall be calculated at a level sufficient to meet the minimum debt service obligations for the following twelve months, when combined with the January first unemployment compensation trust fund balance. The credit instrument and financing agreement emergency repayment fee shall not exceed ten percent of an employer's tax rate.** Each employer shall be notified of the amount due under this section by (January) thirtieth of each year and such amount shall be considered delinquent thirty days thereafter.

288.310. 1. There is hereby created in the state treasury a special fund to be known as the "Special Employment Security Fund". All interest and penalties collected under the provisions of this law, including moneys collected pursuant to section 288.128 for the payment of interest due on federal advances received pursuant to section 288.330, or subject to appropriation, or supplemental appropriation, by the general assembly, amounts received pursuant to the credit instrument and financing agreement **emergency** repayment **[**surcharge**] fee** pursuant to section 288.128 related to the payment of principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements shall be paid into this fund. The moneys collected pursuant to section 288.128 shall be used for the payment of interest due on federal advances received pursuant to section 288.330. Amounts received pursuant to the credit instrument and financing agreement **emergency** repayment **[**surcharge**] fee** pursuant to subsection 3 of section 288.128 shall be used,

following appropriation by the general assembly and exclusively for payment of principal, interest, and administrative expenses related to credit instruments issued under that section, or the payment of principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements. Such moneys, except for moneys collected pursuant to section 288.128, shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of such money be available to finance expenditures for the administration of the employment security law, but nothing in this section shall prevent such moneys, except for moneys collected pursuant to section 288.128, from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Subject to the approval of the director of the department of labor and industrial relations, the moneys in this fund, except for moneys collected pursuant to section 288.128, shall be used by the department of labor and industrial relations for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the unemployment compensation administration fund. Such moneys, except for moneys collected pursuant to section 288.128, shall be available either to satisfy the obligations incurred by the department of labor and industrial relations for the division directly or by requesting the board of fund commissioners to transfer the required amount from the special employment security fund to the unemployment compensation administration fund. The board of fund commissioners shall upon receipt of a written request of the department of labor and industrial relations make any such transfer. No expenditures of this fund or transfer herein provided, except for moneys collected pursuant to section 288.128, shall be made unless and until the director of the department of labor and industrial relations finds that no other funds are available or can properly be used to finance such expenditures, except that as hereinafter authorized expenditures from such fund may be made for the purpose of acquiring lands and buildings, or for the erection of buildings on lands so acquired, which are deemed necessary by the director of the department of labor and industrial relations for the proper administration of this law. The director of the department of labor and industrial relations shall order the transfer of such funds or the payment of any such obligation and such funds shall be paid by the state treasurer on requisitions drawn by the director of the department of labor and industrial relations directing the state auditor to issue his or her warrant therefor. Any such warrant shall be drawn by the state auditor based upon bills of particulars and vouchers certified by an officer or employee designated by the director of the department of labor and industrial relations. Such

certification shall among other things include a duly certified copy of the director of the department of labor and industrial relations' findings hereinbefore referred to. The moneys in this fund, except for moneys collected pursuant to section 288.128, are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the director of the department of labor and industrial relations for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided.

2. The director of the department of labor and industrial relations, subject to the approval of the board of public buildings, is authorized and empowered to use all or any part of the funds in the special employment security fund, except for moneys collected pursuant to section 288.128, for the purpose of acquiring suitable office space for the division by way of purchase, lease, contract or in any other manner, including the right to use such funds or any part thereof to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist in financing the construction of any building erected by the state of Missouri or any of its agencies wherein available space will be provided for the division under lease or contract between the department of labor and industrial relations and the state of Missouri or such other agency. The director of the department of labor and industrial relations may transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

3. The director of the department of labor and industrial relations may also transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of space used by the department of labor and industrial relations in any building erected by the state of Missouri or any of its agencies until such time as the department of labor and industrial relations' proportionate amount of the purchase price of such building and the department of labor and industrial relations' proportionate amount of such costs of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

288.330. 1. Benefits shall be deemed to be due and payable only to the extent

that moneys are available to the credit of the unemployment compensation fund and neither the state nor the division shall be liable for any amount in excess of such sums. The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in order to secure to this state and its citizens the advantages available under the provisions of federal law.

2. (1) The purpose of this subsection is to provide a method of providing funds for the payment of unemployment benefits or maintaining an adequate fund balance in the unemployment compensation fund, and as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or for refinancing those loans or advances.

(2) For the purposes of this subsection, "credit instrument" means any type of borrowing obligation issued under this section, including any bonds, commercial line of credit note, tax anticipation note or similar instrument.

(3) (a) There is hereby created for the purposes of implementing the provisions of this subsection a body corporate and politic to be known as the "Board of Unemployment Fund Financing". The powers of the board shall be vested in five board members who shall be the governor, lieutenant governor, attorney general, director of the department of labor, and the commissioner of administration. The board shall have all powers necessary to effectuate its purposes including, without limitation, the power to provide a seal, keep records of its proceedings, and provide for professional services. The governor shall serve as chair, the lieutenant governor shall serve as vice chair, and the commissioner of administration shall serve as secretary. Staff support for the board shall be provided by the commissioner of administration;

(b) Notwithstanding the provisions of any other law to the contrary:

a. No officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of an appointment as a board member or for his or her service to the board;

b. Board members shall receive no compensation for the performance of their duties under this subsection, but each commissioner shall be reimbursed from the funds of the commission for his or her actual and necessary expenses incurred in carrying out his or her official duties under this subsection.

(c) In the event that any of the board members or officers of the board whose signatures or facsimile signatures appear on any credit instrument shall cease to be board members or officers before the delivery of such credit instrument, their signatures or facsimile signatures shall be valid and sufficient for all purposes as if such board members or officers had remained in office until delivery of such credit instrument.

(d) Neither the board members executing the credit instruments of the board nor any other board members shall be subject to any personal liability or accountability by reason of the issuance of the credit instruments.

(4) The board is authorized, by offering for public negotiated sale, to issue, sell, and deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by the board, which shall mature no later than **[**three**]** **fifteen** years after issuance, in the name of the board in an amount determined by the board not to exceed a total of four hundred fifty million dollars, less the principal amount of any financing agreement entered into under subdivision (17) of this subsection, for the purposes set forth in subdivision (1) of this subsection. Such credit instrument may only be issued upon the approval of a resolution authorizing such issuance by a simple majority of the members of the board, with no other proceedings required. **[**No credit instrument may be outstanding hereunder after January 15, 2008.**]**

(5) The board shall provide for the payment of the principal of the credit instruments, any redemption premiums, the interest on the credit instruments, and the costs attributable to the credit instruments being issued or outstanding as provided in this subsection **[**and in section 288.310**]**. Unless the board directs otherwise, the credit instrument shall be repaid in the same time frame and in the same amounts as would be required for loans issued pursuant to 42 U.S.C. Section 1321; however, in no case shall credit instruments be outstanding for more than **[**three**]** **fifteen** years **[**and further provided that no credit instruments shall be outstanding hereunder after January 15, 2008**]**.

(6) The board may irrevocably pledge money received from the credit instrument and financing agreement **emergency** repayment **[**surcharge**]** **fee** under subsection 3 of section 288.128, and other money legally available to it, which is deposited in an account created for credit instrument repayment in the special employment security fund, provided that the general assembly has first appropriated moneys received from such **[**surcharge**]** **fee** and other moneys deposited in such account for the payment of credit instruments.

(7) Credit instruments issued under this section shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The credit instruments are payable only from revenue provided for under this chapter. The credit instruments shall contain a statement to the effect that:

(a) Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the credit instruments except as provided by this section; and

(b) Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the credit

instruments.

(8) The board pledges and agrees with the owners of any credit instruments issued under this section that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements made with the owners or in any way impair the rights and remedies of the owners until the credit instruments are fully discharged.

(9) The board may prescribe the form, details, and incidents of the credit instruments and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof. If such credit instruments shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such credit instruments may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board, and the provisions of section 108.175, RSMo, shall not apply to such credit instruments. The board may provide for the flow of funds and the establishment and maintenance of separate accounts within the special employment security fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the credit instruments in the documents authorizing the issuance of credit instruments including refunding credit instruments. The resolutions authorizing the issuance of credit instruments may also prohibit the further issuance of credit instruments or other obligations payable from appropriated moneys or may reserve the right to issue additional credit instruments to be payable from appropriated moneys on a parity with or subordinate to the lien and pledge in support of the credit instruments being issued and may contain other provisions and covenants as determined by the board, provided that any terms, provisions or covenants provided in any resolution of the board shall not be inconsistent with the provisions of this section.

(10) The board may issue credit instruments to refund all or any part of the outstanding credit instruments issued under this section including matured but unpaid interest. As with other credit instruments issued under this section, such refunding credit instruments may bear interest at a fixed or variable rate as determined by the board. **[**No such refunding credit instruments may be outstanding for more than three years or after January 15, 2008.**]**

(11) The credit instruments issued by the board, any transaction relating to the credit instruments, and profits made from the sale of the credit instruments are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state. (12) As determined necessary by the board the proceeds of the credit instruments less the cost of issuance shall be placed in the state's unemployment compensation fund and may be used for the purposes for which that fund

may otherwise be used. If those net proceeds are not placed immediately in the unemployment compensation fund they shall be held in the special employment security fund in an account designated for that purpose until they are transferred to the unemployment compensation fund provided that the proceeds of refunding credit instruments may be placed in an escrow account or such other account or instrument as determined necessary by the board.

(13) The board may enter into any contract or agreement deemed necessary or desirable to effectuate cost-effective financing hereunder. Such agreements may include credit enhancement, credit support, or interest rate agreements including, but not limited to, arrangements such as municipal bond insurance; surety bonds; tax anticipation notes; liquidity facilities; forward agreements; tender agreements; remarketing agreements; option agreements; interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase agreements. Any fees or costs associated with such agreements shall be deemed administrative expenses **[**for the purposes of calculating the credit instrument and financing agreement repayment surcharge under subsection 3 of section 288.128**]**. The board, with consideration of all other costs being equal, shall give preference to Missouri-headquartered financial institutions, or those out-of-state-based financial institutions with at least one hundred Missouri employees. (14) To the extent this section conflicts with other laws the provisions of this section prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298, RSMo.

(15) If the United States Secretary of Labor holds that a provision of this subsection or of any provision related to the levy or use of the credit instrument and financial agreement repayment surcharge does not conform with a federal statute or would result in the loss to the state of any federal funds otherwise available to it the board, in cooperation with the department of labor and industrial relations, may administer this subsection, and other provisions related to the credit instrument and financial agreement **emergency** repayment **[**surcharge**] fee**, to conform with the federal statute until the general assembly meets in its next regular session and has an opportunity to amend this subsection or other sections, as applicable.

(16) Nothing in this chapter shall be construed to prohibit the officials of the state from borrowing from the government of the United States in order to pay unemployment benefits under subsection 1 of this section or otherwise.

(17) (a) As used in this subdivision the term "lender" means any state or national bank. (b) The board is authorized to enter financial agreements with any lender for the purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements in whole or in part, upon the approval of the simple majority of the members of the board of a resolution authorizing such financial agreements, with no other proceedings required. The total amount of the outstanding obligation under all such agreements shall not exceed the difference of four hundred fifty million dollars and

the principal amount of credit instruments issued under this subsection. In no instance shall the outstanding obligation under any financial agreement continue for more than **[**three**]** **fifteen** years**[**, and no such financial agreement, whether entered into for refinancing purposes or otherwise, shall be outstanding after January 15, 2008**]**. Repayment of obligations to lenders shall be made from the special employment security fund, section 288.310, **or the principal incurred due to the payment of unemployment benefits may be repaid from the unemployment compensation trust fund** subject to appropriation by the general assembly.

(c) Financial agreements entered into under this subdivision shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The financial agreements are payable only from revenue provided for under this chapter. The financial agreements shall contain a statement to the effect that:

a. Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the financial agreements except as provided by this section; and

b. Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the financial agreements.

(d) Neither the board members executing the financial agreements nor any other board members shall be subject to any personal liability or accountability by reason of the execution of such financial agreements.

(e) The board may prescribe the form, details and incidents of the financing agreements and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof provided that any terms, provisions or covenants provided in any such financing agreement shall not be inconsistent with the provisions of this section. If such financing agreements shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such financing agreements may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not apply to such financing agreements.

(18) The commission may issue credit instruments to refund all or any part of the outstanding borrowing issued under this section including matured but unpaid

interest.

(19) The credit instruments issued by the commission, any transaction relating to the credit instruments, and profits made from the issuance of credit are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

3. In event of the suspension of this law, any unobligated funds in the unemployment compensation fund, and returned by the United States Treasurer because such Federal Social Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the division until the legislature shall provide for the disposition thereof. In event no disposition is made by the legislature at the next regular meeting subsequent to suspension of said law, then all unobligated funds shall be returned ratably to those who contributed thereto.

4. For purposes of this section, as contained in senate substitute no. 2 for senate committee substitute for house substitute for house committee substitute for house bill nos. 1268 and 1211, ninety-second general assembly, second regular session, the revisor of statutes shall renumber subdivision (16) of subsection 2 of such section as subdivision (17) of such subsection and renumber subdivision (17) of subsection 2 of such section as subdivision (16) of such subsection.