FIRST REGULAR SESSION

SENATE BILL NO. 319

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time February 8, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1305S.01I

AN ACT

To repeal sections 288.045, 288.060, 288.110, 288.121, 288.122, and 288.128, RSMo, and to enact in lieu thereof six new sections relating to employees.

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

Section A. Sections 288.045, 288.060, 288.110, 288.121, 288.122, and 288.128, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 288.045, 288.060, 288.110, 288.121, 288.122, and 288.128, to read as follows:

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, the test results and the laboratory's trial packet shall be included in the administrative record and considered as evidence.

4. 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 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 shall be conducted only if sufficient cause

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

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 the employer's policy clearly states that there will be random testing, then testing of the claimant may be conducted randomly.

6. 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. The application of the alcohol and controlled substance testing provisions of this section shall not apply in the event that the claimant is subject to the provisions of any applicable collective bargaining agreement, which contains methods for alcohol or controlled substance testing. 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. 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. 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. "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. 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 results as specified in subsection 2 of this section.

10. 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. 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. 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. (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.

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.

288.060. 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 pursuant to 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 pursuant to 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.

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 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		
Less Than	Equals or Exceeds	Percentage 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 shall expire upon the last day of the fourth calendar quarter of **[**2007**]** **2020**.

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**]** **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. 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

repayment surcharge. 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. 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.