

FIRST REGULAR SESSION

# SENATE BILL NO. 162

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 7, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0121S.011

## AN ACT

To repeal section 143.121, RSMo, and to enact in lieu thereof ten new sections relating to leave from employment, with a referendum clause.

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

Section A. Section 143.121, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 143.121, 285.400, 285.405, 285.410, 285.415, 285.420, 285.425, 285.430, 285.435, and 285.440, to read as follows:

143.121. 1. The Missouri adjusted gross income of a resident individual shall be the taxpayer's federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayer's federal adjusted gross income:

(1) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(2) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (1) of subsection 3 of this section. The amount added pursuant to this subdivision shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(3) The amount of any deduction that is included in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as

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

18 amended by the Job Creation and Worker Assistance Act of 2002 to the extent the  
19 amount deducted relates to property purchased on or after July 1, 2002, but  
20 before July 1, 2003, and to the extent the amount deducted exceeds the amount  
21 that would have been deductible pursuant to Section 168 of the Internal Revenue  
22 Code of 1986 as in effect on January 1, 2002;

23 (4) The amount of any deduction that is included in the computation of  
24 federal taxable income for net operating loss allowed by Section 172 of the  
25 Internal Revenue Code of 1986, as amended, other than the deduction allowed by  
26 Section [172(b)(1)(G)] **172(b)(1)(F)** and Section [172(i)] **172(h)** of the Internal  
27 Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims  
28 in the tax year in which the net operating loss occurred or carries forward for a  
29 period of more than twenty years and carries backward for more than two  
30 years. Any amount of net operating loss taken against federal taxable income but  
31 disallowed for Missouri income tax purposes pursuant to this subdivision after  
32 June 18, 2002, may be carried forward and taken against any income on the  
33 Missouri income tax return for a period of not more than twenty years from the  
34 year of the initial loss; and

35 (5) For nonresident individuals in all taxable years ending on or after  
36 December 31, 2006, the amount of any property taxes paid to another state or a  
37 political subdivision of another state for which a deduction was allowed on such  
38 nonresident's federal return in the taxable year unless such state, political  
39 subdivision of a state, or the District of Columbia allows a subtraction from  
40 income for property taxes paid to this state for purposes of calculating income for  
41 the income tax for such state, political subdivision of a state, or the District of  
42 Columbia.

43 3. There shall be subtracted from the taxpayer's federal adjusted gross  
44 income the following amounts to the extent included in federal adjusted gross  
45 income:

46 (1) Interest or dividends on obligations of the United States and its  
47 territories and possessions or of any authority, commission or instrumentality of  
48 the United States to the extent exempt from Missouri income taxes pursuant to  
49 the laws of the United States. The amount subtracted pursuant to this  
50 subdivision shall be reduced by any interest on indebtedness incurred to carry the  
51 described obligations or securities and by any expenses incurred in the production  
52 of interest or dividend income described in this subdivision. The reduction in the  
53 previous sentence shall only apply to the extent that such expenses including

54 amortizable bond premiums are deducted in determining the taxpayer's federal  
55 adjusted gross income or included in the taxpayer's Missouri itemized  
56 deduction. The reduction shall only be made if the expenses total at least five  
57 hundred dollars;

58 (2) The portion of any gain, from the sale or other disposition of property  
59 having a higher adjusted basis to the taxpayer for Missouri income tax purposes  
60 than for federal income tax purposes on December 31, 1972, that does not exceed  
61 such difference in basis. If a gain is considered a long-term capital gain for  
62 federal income tax purposes, the modification shall be limited to one-half of such  
63 portion of the gain;

64 (3) The amount necessary to prevent the taxation pursuant to this chapter  
65 of any annuity or other amount of income or gain which was properly included in  
66 income or gain and was taxed pursuant to the laws of Missouri for a taxable year  
67 prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose  
68 death the taxpayer acquired the right to receive the income or gain, or to a trust  
69 or estate from which the taxpayer received the income or gain;

70 (4) Accumulation distributions received by a taxpayer as a beneficiary of  
71 a trust to the extent that the same are included in federal adjusted gross income;

72 (5) The amount of any state income tax refund for a prior year which was  
73 included in the federal adjusted gross income;

74 (6) The portion of capital gain specified in section 135.357 that would  
75 otherwise be included in federal adjusted gross income;

76 (7) The amount that would have been deducted in the computation of  
77 federal taxable income pursuant to Section 168 of the Internal Revenue Code as  
78 in effect on January 1, 2002, to the extent that amount relates to property  
79 purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that  
80 amount exceeds the amount actually deducted pursuant to Section 168 of the  
81 Internal Revenue Code as amended by the Job Creation and Worker Assistance  
82 Act of 2002;

83 (8) For all tax years beginning on or after January 1, 2005, the amount  
84 of any income received for military service while the taxpayer serves in a combat  
85 zone which is included in federal adjusted gross income and not otherwise  
86 excluded therefrom. As used in this section, "combat zone" means any area which  
87 the President of the United States by Executive Order designates as an area in  
88 which Armed Forces of the United States are or have engaged in combat. Service  
89 is performed in a combat zone only if performed on or after the date designated

90 by the President by Executive Order as the date of the commencing of combat  
91 activities in such zone, and on or before the date designated by the President by  
92 Executive Order as the date of the termination of combatant activities in such  
93 zone;

94 (9) For all tax years ending on or after July 1, 2002, with respect to  
95 qualified property that is sold or otherwise disposed of during a taxable year by  
96 a taxpayer and for which an additional modification was made under subdivision  
97 (3) of subsection 2 of this section, the amount by which additional modification  
98 made under subdivision (3) of subsection 2 of this section on qualified property  
99 has not been recovered through the additional subtractions provided in  
100 subdivision (7) of this subsection; [and]

101 (10) **The amount contributed to the Missouri earned family and**  
102 **medical leave fund established under section 285.435; and**

103 (11) For all tax years beginning on or after January 1, 2014, the amount  
104 of any income received as payment from any program which provides  
105 compensation to agricultural producers who have suffered a loss as the result of  
106 a disaster or emergency, including the:

107 (a) Livestock Forage Disaster Program;

108 (b) Livestock Indemnity Program;

109 (c) Emergency Assistance for Livestock, Honeybees, and Farm-Raised  
110 Fish;

111 (d) Emergency Conservation Program;

112 (e) Noninsured Crop Disaster Assistance Program;

113 (f) Pasture, Rangeland, Forage Pilot Insurance Program;

114 (g) Annual Forage Pilot Program;

115 (h) Livestock Risk Protection Insurance Plan; and

116 (i) Livestock Gross Margin insurance plan.

117 4. There shall be added to or subtracted from the taxpayer's federal  
118 adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment  
119 provided in section 143.351.

120 5. There shall be added to or subtracted from the taxpayer's federal  
121 adjusted gross income the modifications provided in section 143.411.

122 6. In addition to the modifications to a taxpayer's federal adjusted gross  
123 income in this section, to calculate Missouri adjusted gross income there shall be  
124 subtracted from the taxpayer's federal adjusted gross income any gain recognized  
125 pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended,

126 arising from compulsory or involuntary conversion of property as a result of  
127 condemnation or the imminence thereof.

128         7. (1) As used in this subsection, "qualified health insurance premium"  
129 means the amount paid during the tax year by such taxpayer for any insurance  
130 policy primarily providing health care coverage for the taxpayer, the taxpayer's  
131 spouse, or the taxpayer's dependents.

132         (2) In addition to the subtractions in subsection 3 of this section, one  
133 hundred percent of the amount of qualified health insurance premiums shall be  
134 subtracted from the taxpayer's federal adjusted gross income to the extent the  
135 amount paid for such premiums is included in federal taxable income. The  
136 taxpayer shall provide the department of revenue with proof of the amount of  
137 qualified health insurance premiums paid.

138         8. (1) Beginning January 1, 2014, in addition to the subtractions provided  
139 in this section, one hundred percent of the cost incurred by a taxpayer for a home  
140 energy audit conducted by an entity certified by the department of natural  
141 resources under section 640.153 or the implementation of any energy efficiency  
142 recommendations made in such an audit shall be subtracted from the taxpayer's  
143 federal adjusted gross income to the extent the amount paid for any such activity  
144 is included in federal taxable income. The taxpayer shall provide the department  
145 of revenue with a summary of any recommendations made in a qualified home  
146 energy audit, the name and certification number of the qualified home energy  
147 auditor who conducted the audit, and proof of the amount paid for any activities  
148 under this subsection for which a deduction is claimed. The taxpayer shall also  
149 provide a copy of the summary of any recommendations made in a qualified home  
150 energy audit to the department of natural resources.

151         (2) At no time shall a deduction claimed under this subsection by an  
152 individual taxpayer or taxpayers filing combined returns exceed one thousand  
153 dollars per year for individual taxpayers or cumulatively exceed two thousand  
154 dollars per year for taxpayers filing combined returns.

155         (3) Any deduction claimed under this subsection shall be claimed for the  
156 tax year in which the qualified home energy audit was conducted or in which the  
157 implementation of the energy efficiency recommendations occurred. If  
158 implementation of the energy efficiency recommendations occurred during more  
159 than one year, the deduction may be claimed in more than one year, subject to the  
160 limitations provided under subdivision (2) of this subsection.

161         (4) A deduction shall not be claimed for any otherwise eligible activity

162 under this subsection if such activity qualified for and received any rebate or  
163 other incentive through a state-sponsored energy program or through an electric  
164 corporation, gas corporation, electric cooperative, or municipally owned utility.

165 9. The provisions of subsection 8 of this section shall expire on December  
166 31, 2020.

285.400. 1. The provisions of sections 285.400 to 285.440 shall be  
2 known and may be cited as the "Missouri Earned Family and Medical  
3 Leave Act".

4 2. As used in sections 285.400 to 285.440, the following terms shall  
5 mean:

6 (1) "Average weekly pay", the total wages earned by an employee  
7 in the past twelve months, divided by the number of weeks worked by  
8 the employee in such twelve month period, or the weekly salary of the  
9 employee at the time that family or medical leave is taken, whichever  
10 is greater provided that the average weekly pay shall never exceed the  
11 average state weekly pay;

12 (2) "Average state weekly pay", the total wages earned by all  
13 employees who have contributed to the fund in the past twelve months,  
14 divided by the total number of such employees, the quotient of which  
15 is divided by the average number of weeks worked by all employees  
16 who have contributed to the fund in the last twelve months;

17 (3) "Care", includes, but is not limited to, physical care, emotional  
18 support, visitation, assistance in treatment, transportation, arranging  
19 for a change in care, assistance with essential daily living matters, and  
20 personal attendant services;

21 (4) "Child", a biological, adopted, or foster son or daughter, a  
22 stepson or stepdaughter, a legal ward, a son or daughter of a domestic  
23 or civil union partner, or the person to whom the employee stands in  
24 loco parentis who is under nineteen years of age or nineteen years of  
25 age or older but incapable of self-care because of mental or physical  
26 impairment;

27 (5) "Department", the department of labor and industrial  
28 relations;

29 (6) "Employee", any person performing service for remuneration  
30 unless it is shown to the satisfaction of the department that such  
31 services were performed by an independent contractor. In determining  
32 the existence of the independent contractor relationship, the common

33 law of agency right to control shall be applied. The common law of  
34 agency right to control test shall include but not be limited to: if the  
35 alleged employer retains the right to control the manner and means by  
36 which the results are to be accomplished, the person who performs the  
37 service is an employee. If only the results are controlled, the person  
38 performing the service is an independent contractor;

39 (7) "Employer", any person acting directly or indirectly in the  
40 interest of an employer in relation to an employee;

41 (8) "Family member", a child, parent, grandparent, grandchild,  
42 sibling, spouse, domestic or civil union partner, or household member,  
43 or any ward as that term is defined in section 475.010;

44 (9) "Family or medical leave", any of the following:

45 (a) Leave to bond with a minor child within the first year of the  
46 child's birth or placement in connection with foster care or adoption;

47 (b) Leave to care for a family member who has a serious health  
48 condition;

49 (c) Leave due to an employee's own serious health condition; or

50 (d) Leave to assume any familial responsibility because a spouse,  
51 child, or parent of an employee is on, or has been notified of, an  
52 impending call to active duty in the uniformed services;

53 (10) "Fund", the Missouri earned family and medical leave fund  
54 established in section 285.435;

55 (11) "Grandchild", a child of the employee's child;

56 (12) "Grandparent", a parent of the employee's parent;

57 (13) "Health care provider", any physician, hospital, health  
58 maintenance organization, ambulatory surgical center, long-term care  
59 facility including those licensed under chapter 198, dentist, registered  
60 or licensed practical nurse, optometrist, podiatrist, pharmacist,  
61 chiropractor, physical therapist, psychologist, physician-in-training,  
62 and any other person or entity that provides health care services under  
63 the authority of a license or certificate of this state or any other state  
64 or foreign country;

65 (14) "Parent", a biological, foster, or adoptive parent, a parent-in-  
66 law, a stepparent, a legal guardian, or other person who stood in loco  
67 parentis to the employee when the employee was a child;

68 (15) "Parent-in-law", the parent of a spouse or domestic or civil  
69 union partner;

70           **(16) "Serious health condition", an illness, injury, impairment, or**  
71 **physical or mental condition that involves inpatient care in a hospital,**  
72 **hospice, or residential health care facility, or continuing medical**  
73 **treatment or continuing supervision by a health care provider. The**  
74 **term shall include medical attention, services, or counseling for victims**  
75 **of stalking, domestic violence, abuse, or sexual assault, as such terms**  
76 **are defined in section 455.010, or victims of trafficking for the purpose**  
77 **of sexual exploitation as described in section 566.209;**

78           **(17) "Sibling", a person related to another person by blood,**  
79 **adoption, or affinity through a common legal or biological parent;**

80           **(18) "Spouse", a partner to a lawful marriage;**

81           **(19) "Uniformed services":**

82           **(a) Active and reserve components of the Army, Navy, Air Force,**  
83 **Marine Corps, or Coast Guard of the United States;**

84           **(b) The Merchant Marine, the commissioned corps of the Public**  
85 **Health Service, or the commissioned corps of the National Oceanic and**  
86 **Atmospheric Administration of the United States; or**

87           **(c) The Missouri National Guard.**

**285.405. 1. There is hereby established the "Missouri Earned**  
2 **Family and Medical Leave Program" to provide up to six weeks of wage**  
3 **replacement benefits to employees who take time off work for family or**  
4 **medical leave. The department shall administer and implement the**  
5 **program and the provisions of sections 285.400 to 285.440, and shall pay**  
6 **Missouri family or medical leave benefits as specified in such sections.**

7           **2. An employee shall be eligible to receive Missouri earned**  
8 **family or medical leave program benefits equal to one hundred percent**  
9 **of his or her average weekly pay for each full week during which he or**  
10 **she has taken family or medical leave. An employee may take family or**  
11 **medical leave for a partial week and shall only be eligible to receive**  
12 **the fraction of the average weekly pay which is equal to the number of**  
13 **days of leave taken divided by the number of days for which such**  
14 **employee would have otherwise worked in the respective week had the**  
15 **employee not taken family or medical leave. Any leave taken shall be**  
16 **in full-day increments.**

17           **3. No more than six weeks of Missouri earned family and medical**  
18 **leave benefits shall be paid to an employee within any fifty-two week**  
19 **period.**



20           4. An employee shall file a claim for Missouri earned family and  
21 medical leave benefits with the department not later than the forty-first  
22 consecutive day following the first compensable day with respect to  
23 which the claim is made for benefits, which time shall be extended by  
24 the department upon a showing of good cause. If a first claim is not  
25 complete, the claim form shall be returned to the employee for  
26 completion, and it shall be completed and returned not later than the  
27 tenth consecutive day after the date it was verifiably sent by the  
28 department to the employee, except that such time shall be extended by  
29 the department upon a showing of good cause.

30           5. No employee shall be eligible for Missouri earned family and  
31 medical leave program benefits with respect to any day:

32           (1) That he or she is eligible to receive unemployment  
33 compensation benefits under chapter 288 or under an unemployment  
34 compensation act of any other state or of the federal government; or

35           (2) That he or she has received, or is entitled to receive, any  
36 other benefits under chapter 287.

37           6. No employee shall be eligible for Missouri earned family and  
38 medical leave benefits until such employee has paid into the Missouri  
39 earned family and medical leave fund for fifty-two weeks.

40           7. An employee who is entitled to leave under the Missouri  
41 earned family and medical leave act and the Family and Medical Leave  
42 Act (FMLA) under 29 U.S.C. Section 2601 et seq. shall take family or  
43 medical leave under sections 285.400 to 285.440 concurrent with leave  
44 taken under the FMLA.

45           8. The first payment of Missouri earned family and medical leave  
46 benefits shall be made to an employee within two weeks after the  
47 completed claim is received by the department or the day the family or  
48 medical leave began, whichever is later. Subsequent payments shall be  
49 made bimonthly.

285.410. 1. (1) An employee shall establish eligibility for each  
2 uninterrupted family or medical care leave period by filing a first claim  
3 for benefits supported by the certificate of a treating health care  
4 provider that establishes the serious health condition of the family  
5 member that warrants the care of the employee, or that establishes the  
6 serious health condition of the employee. For subsequent periods of  
7 uninterrupted leave after the period covered by the initial certificate

8 or any preceding continued claim, a claimant shall file a continued  
9 claim for those benefits supported by the certificate of a treating health  
10 care provider.

11 (2) For employees seeking leave in order to assume a familial  
12 responsibility due to a spouse, child, or parent being on active duty in  
13 the uniformed services, eligibility for leave shall be established by  
14 providing, in a manner satisfactory to the department, proof of the  
15 family member being on active duty.

16 (3) For employees seeking leave due to a serious health condition  
17 related to seeking medical attention, services, or counseling for victims  
18 of stalking, domestic violence, abuse, or sexual assault, as such terms  
19 are defined in section 455.010, or victims of trafficking for purposes of  
20 sexual exploitation as described in section 566.209, the certificate  
21 required by subdivision (1) of this section may be provided by any of  
22 the following:

23 (a) A health care provider;

24 (b) A court which has jurisdiction over a judicial proceeding  
25 relating to the serious health condition of the employee or the serious  
26 health condition of the family member of the employee; or

27 (c) A law enforcement officer with knowledge of the serious  
28 health condition of the employee or the serious health condition of the  
29 family member of the employee.

30 2. The certificates required under subsection 1 of this section  
31 shall be developed by the department. In order to establish medical  
32 eligibility of the serious health condition of the family member that  
33 warrants the care of the employee, or to establish medical eligibility of  
34 the serious health condition of the employee, the information on the  
35 certificate shall be within the physician's or health care provider's  
36 knowledge and shall be based on a physical examination and  
37 documented medical history of the family member or employee. The  
38 certificate shall contain all of the following:

39 (1) A diagnosis and diagnostic code prescribed in the  
40 International Classification of Diseases or, if no diagnosis has yet been  
41 obtained, a detailed statement of symptoms;

42 (2) The date, if known, on which the condition commenced;

43 (3) The probable duration of the condition;

44 (4) An estimate of the amount of time that the physician or

45 health care provider believes the employee needs to care for the family  
46 member or himself or herself; and

47 (5) If applicable, a statement that the serious health condition  
48 warrants the participation of the employee to provide care for his or  
49 her family member.

50 3. The department shall develop a certificate form that is  
51 separate and distinct from the certificate required in subsection 1 of  
52 this section for an employee taking leave to bond with a minor child  
53 within the first year of the child's birth or placement in connection  
54 with foster care or adoption.

55 4. Any claim of an individual who obtains care and treatment  
56 outside the state shall be supported by a certificate of a treating health  
57 care provider duly licensed or certified by the state or foreign country  
58 in which the claimant is receiving care and treatment.

59 5. Nothing in this section shall be construed to preclude the  
60 department from requesting additional medical evidence to supplement  
61 any claim. Any cost incurred for procuring additional medical evidence  
62 shall be paid by the employee. The department may require that the  
63 additional evidence include any or all of the following:

64 (1) Identification of diagnoses;

65 (2) Identification of symptoms;

66 (3) A statement setting forth the facts of the serious health  
67 condition of the employee or such employee's family member, which  
68 shall be completed by any of the following individuals:

69 (a) The health care provider treating the employee or family  
70 member of the employee;

71 (b) The registrar, authorized medical officer, or other duly  
72 authorized official of the hospital or health care facility treating the  
73 employee or family member of the employee; or

74 (c) An examining physician or other representative of the  
75 department;

76 (4) An affidavit from an employee averring that the employee or  
77 such employee's spouse gave birth to a child or has adopted or received  
78 a child in connection with foster care.

285.415. Employees shall provide at least thirty days advance  
2 notice to their employer before family and medical leave is to begin if  
3 the need for the leave is foreseeable. If thirty days notice is not

4 practicable, notice shall be given to the employer as soon as  
5 practicable.

285.420. 1. Except as provided in subsection 4 of this section, an  
2 employee may file a notice of appeal from any determination of  
3 eligibility for benefits made by the department with the administrative  
4 hearing commission pursuant to chapter 621. Such appeal shall be  
5 made by mail or in person within thirty days after the date on which  
6 a copy of the department's decision was received by the employee.

7 2. The administrative hearing commission's proposed decision  
8 and order shall be final and not subject to further appeal, unless within  
9 thirty days after the decision is served on the interested parties, a  
10 party files a petition for judicial review as provided in chapter 536.

11 3. A determination of the amount of benefits payable under  
12 sections 285.400 to 285.440 shall not serve as a basis for appeal under  
13 this section. However, the determination shall be subject to request by  
14 the employee on family or medical leave for redetermination by the  
15 department at any time within one year from the date of delivery or  
16 mailing of such determination, or any redetermination thereof. A  
17 redetermination shall be furnished to the individual in writing.

18 4. A denial of benefits shall become final in the absence of timely  
19 appeal therefrom. The department may redetermine a denial of  
20 benefits at any time within one year from delivery or mailing of such  
21 denial to correct an error in identity, omission of fact, or  
22 misapplication of law with respect to the facts.

23 5. A determination of allowance of benefits shall become final in  
24 the absence of timely appeal therefrom. The department may  
25 redetermine such allowance at any time within two years following the  
26 application year in which such allowance was made in order to recover  
27 any benefits for which recovery is provided under this section.

28 6. A redetermination of benefits may be made at any time for any  
29 of the following reasons:

30 (1) To conform to a final court decision applicable to either an  
31 initial determination or a determination of denial or allowance of  
32 benefits;

33 (2) In the event of a back pay award or settlement affecting the  
34 allowance of benefits; or

35 (3) In the case of misrepresentation or willful failure to report

36 a material fact.

37 Written notice of any such redetermination shall be promptly given by  
38 mail or delivered to such interested parties as were notified of the  
39 initial determination of denial or allowance of benefits and any new  
40 interested party or parties who, under such rule as the department may  
41 adopt, would be an interested party.

285.425. 1. Notwithstanding any provision of law to the contrary,  
2 it shall be unlawful for any person to discharge or in any other manner  
3 discriminate against an employee because the employee has made a  
4 claim for, indicated an intent to make a claim for, or received Missouri  
5 earned family and medical leave benefits.

6 2. (1) Any person who violates the provisions of subsection 1 of  
7 this section shall be liable to any employee of such person who is  
8 affected by the violation for such equitable relief as may be appropriate  
9 including employment, reinstatement, or promotion and for damages  
10 equal to the sum of:

11 (a) The amount of:

12 a. Any wages, salary, employment benefits, or other  
13 compensation denied or lost to such individual by reason of the  
14 violation; or

15 b. In a case in which wages, salary, employment benefits, or  
16 other compensation have not been denied or lost to the individual, any  
17 actual monetary losses sustained by the individual as a direct result of  
18 the violation, such as the cost of providing care, up to a sum equal to  
19 sixty calendar days of wages or salary for the individual;

20 (b) The interest on the amount described in paragraph (a) of this  
21 subdivision, such interest rate being equal to the market rate as  
22 determined by the director of the division of finance under section  
23 408.030; and

24 (c) An additional amount as liquidated damages equal to the sum  
25 of the amount described in paragraph (a) of this subdivision and the  
26 interest described in paragraph (b) of this subdivision, except that if a  
27 person who has violated subsection 1 of this section proves to the  
28 satisfaction of the court that the act or omission was in good faith and  
29 that the person had reasonable grounds for believing that the act or  
30 omission was not a violation, such court may reduce the amount of such  
31 liquidated damages.

32           **(2) The court may additionally require reasonable attorney's**  
33 **fees, expert witness fees, and other courts costs to be paid by a**  
34 **defendant.**

35           **3. An action to recover the relief prescribed in subsection 2 of**  
36 **this section may be maintained against any person in any court of**  
37 **competent jurisdiction by the employee affected.**

38           **4. The department may bring an action seeking relief on behalf**  
39 **of an employee under this section. The right to bring an action**  
40 **provided under subsection 3 of this section shall terminate upon the**  
41 **filing of a complaint by the department. If any damages are recovered**  
42 **in such action, such damages shall be held in a special deposit account**  
43 **and paid directly to each employee affected.**

44           **5. An action may be brought under this section not later than**  
45 **three years after the date of the alleged violation for which the action**  
46 **is brought. An action brought under this section shall be considered to**  
47 **be commenced on the date when the complaint is filed.**

**285.430. 1. The department shall develop and implement an**  
2 **outreach program to ensure that employees who may be eligible to**  
3 **receive Missouri earned family and medical leave benefits under**  
4 **sections 285.400 to 285.440 are made aware of such benefits. Outreach**  
5 **information shall easily explain eligibility requirements, the claims**  
6 **process, weekly benefit amounts, maximum benefits payable, notice and**  
7 **medical certification requirements, reinstatement and**  
8 **nondiscrimination rights, confidentiality, and the relationship between**  
9 **employment protection, leave from employment, wage replacement**  
10 **benefits, and other laws, collective bargaining agreements, and**  
11 **employer policies.**

12           **2. Not later than three years after the effective date of sections**  
13 **285.400 to 285.440, the state auditor shall submit to the general**  
14 **assembly a report on the Missouri earned family and medical leave**  
15 **benefits paid for any month during the one-year period beginning on**  
16 **the effective date of sections 285.400 to 285.440. The report shall**  
17 **include the following:**

18           **(1) An identification of the total number of applications for such**  
19 **benefits filed, and the average number of days between when an**  
20 **application is received and when a determination is made;**

21           **(2) An identification of the total number of requests for review**

22 of an initial adverse determination of eligibility for such benefits made,  
23 and the average number of days between when such review is  
24 requested and when a final determination of eligibility is made; and

25 (3) An identification of the total number of monthly benefit claim  
26 reports for such benefits filed, and the average number of days between  
27 the date such report is received and the date on which the initial  
28 determination of eligibility with respect to the claim report is made.

285.435. 1. (1) There is hereby created in the state treasury the  
2 "Missouri Earned Family and Medical Leave Fund", which shall consist  
3 of money collected under this section. The state treasurer shall be  
4 custodian of the fund. In accordance with sections 30.170 and 30.180,  
5 the state treasurer may approve disbursements. The fund shall be a  
6 dedicated fund and money in the fund shall be used solely by the  
7 department of labor and industrial relations for the purpose of  
8 distributing Missouri earned family and medical leave program  
9 benefits.

10 (2) The state treasurer shall invest moneys in the fund in the  
11 same manner as other funds are invested. Any interest and moneys  
12 earned on such investments shall be credited to the fund.

13 2. (1) In order to provide funding to implement the provisions  
14 of sections 285.400 to 285.440, employees shall contribute one quarter  
15 of one percent of their average weekly pay to the Missouri earned  
16 family and medical leave fund beginning January 1, 2021.

17 (2) For purposes of this section, in determining the average  
18 weekly pay of an employee, the total wages of an employee shall not  
19 exceed the contribution and benefit base established by the  
20 Commissioner of Social Security Administration under 42 U.S.C. 430.

21 (3) Notwithstanding the provisions of section 285.405 to the  
22 contrary, if there is not sufficient resources in the fund, the department  
23 may, at its discretion, reduce the benefit amount each employee is  
24 eligible to receive. If the benefit amount is reduced, each employee  
25 shall receive the same percent of his or her average weekly wage.

26 (4) No employee shall receive benefits from the fund until  
27 January 1, 2022.

28 3. Under section 23.253 of the Missouri sunset act:

29 (1) The provisions of the new program authorized under sections  
30 285.400 to 285.440 shall automatically sunset on December 31, 2025,

31 unless reauthorized by an act of the general assembly;

32 (2) If such program is reauthorized, the program authorized  
33 under sections 285.400 to 285.440 shall automatically sunset six years  
34 after the effective date of the reauthorization of such sections; and

35 (3) Sections 285.400 to 285.440 shall terminate on September first  
36 of the calendar year immediately following the calendar year in which  
37 the program authorized under such sections is sunset.

285.440. Any rule or portion of a rule, as that term is defined in  
2 section 536.010 that is created under the authority delegated in sections  
3 285.400 to 285.435 shall become effective only if it complies with and is  
4 subject to all of the provisions of chapter 536, and, if applicable, section  
5 536.028. This section and chapter 536 are nonseverable and if any of  
6 the powers vested with the general assembly pursuant to chapter 536,  
7 to review, to delay the effective date, or to disapprove and annul a rule  
8 are subsequently held unconstitutional, then the grant of rulemaking  
9 authority and any rule proposed or adopted after December 3, 2020,  
10 shall be invalid and void.

Section B. This act is hereby submitted to the qualified voters of this state  
2 for approval or rejection at an election which is hereby ordered and which shall  
3 be held and conducted on Tuesday next following the first Monday in November,  
4 2020, pursuant to the laws and constitutional provisions of this state for the  
5 submission of referendum measures by the general assembly, and this act shall  
6 become effective when approved by a majority of the votes cast thereon at such  
7 election and not otherwise.

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