

FIRST REGULAR SESSION  
[P E R F E C T E D]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 90**  
**100TH GENERAL ASSEMBLY**

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Reported from the Committee on Small Business and Industry, February 14, 2019, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 90, adopted February 20, 2019.

Taken up for Perfection February 20, 2019. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

0642S.02P

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**AN ACT**

To repeal sections 288.040, 288.130, 288.160, and 288.245, RSMo, and to enact in lieu thereof five new sections relating to employment security.

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

Section A. Sections 288.040, 288.130, 288.160, and 288.245, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections  
3 288.040, 288.130, 288.160, 288.245, and 288.247, to read as follows:

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

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

7 (2) The claimant is able to work and is available for work. No person  
8 shall be deemed available for work unless such person has been and is actively  
9 and earnestly seeking work. Upon the filing of an initial or renewed claim, and  
10 prior to the filing of each weekly claim thereafter, the deputy shall notify each  
11 claimant of the number of work search contacts required to constitute an active  
12 search for work. **Unless the deputy directs otherwise, a claimant shall**  
13 **make a minimum of three work search contacts during any week for**  
14 **which he or she claims benefits.** No person shall be considered not available  
15 for work, pursuant to this subdivision, solely because he or she is a substitute

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

16 teacher or is on jury duty. A claimant shall not be determined to be ineligible  
17 pursuant to this subdivision because of not actively and earnestly seeking work  
18 if:

19 (a) The claimant is participating in training approved pursuant to Section  
20 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

21 (b) The claimant is temporarily unemployed through no fault of his or her  
22 own and has a definite recall date within eight weeks of his or her first day of  
23 unemployment; however, upon application of the employer responsible for the  
24 claimant's unemployment, such eight-week period may be extended not to exceed  
25 a total of sixteen weeks at the discretion of the director;

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

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

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

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

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

44 (4) Prior to the first week of a period of total or partial unemployment for  
45 which the claimant claims benefits he or she has been totally or partially  
46 unemployed for a waiting period of one week. No more than one waiting week  
47 will be required in any benefit year. During calendar year 2008 and each  
48 calendar year thereafter, the one-week waiting period shall become compensable  
49 once his or her remaining balance on the claim is equal to or less than the  
50 compensable amount for the waiting period. No week shall be counted as a week  
51 of total or partial unemployment for the purposes of this subsection unless it

52 occurs within the benefit year which includes the week with respect to which the  
53 claimant claims benefits;

54 (5) The claimant has made a claim for benefits within fourteen days from  
55 the last day of the week being claimed. The fourteen-day period may, for good  
56 cause, be extended to twenty-eight days;

57 (6) The claimant has reported to an employment office to participate in  
58 a reemployment assessment and reemployment services as directed by the deputy  
59 or designated staff of an employment office, unless the deputy determines that  
60 good cause exists for the claimant's failure to participate in such reemployment  
61 assessment and reemployment services. For purposes of this section,  
62 "reemployment services" may include, but not be limited to, the following:

63 (a) Providing an orientation to employment office services;

64 (b) Providing job search assistance; and

65 (c) Providing labor market statistics or analysis;

66 Ineligibility under this subdivision shall begin on the first day of the week which  
67 the claimant was scheduled to report for the reemployment assessment or  
68 reemployment services and shall end on the last day of the week preceding the  
69 week during which the claimant does report in person to the employment office  
70 for such reemployment assessment or reemployment services;

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

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

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

79 2. A claimant shall be ineligible for waiting week credit or benefits for any  
80 week for which the deputy finds he or she is or has been suspended by his or her  
81 most recent employer for misconduct connected with his or her  
82 work. Suspensions of four weeks or more shall be treated as discharges.

83 3. (1) Benefits based on "service in employment", described in subsections  
84 7 and 8 of section 288.034, shall be payable in the same amount, on the same  
85 terms and subject to the same conditions as compensation payable on the basis  
86 of other service subject to this law; except that:

87 (a) With respect to service performed in an instructional, research, or

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

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

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

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

120 (2) If compensation is denied for any week pursuant to paragraph (b) or  
121 (d) of subdivision (1) of this subsection to any individual performing services at  
122 an educational institution in any capacity (other than instructional, research or  
123 principal administrative capacity), and such individual was not offered an

124 opportunity to perform such services for the second of such academic years or  
125 terms, such individual shall be entitled to a retroactive payment of the  
126 compensation for each week for which the individual filed a timely claim for  
127 compensation and for which compensation was denied solely by reason of  
128 paragraph (b) or (d) of subdivision (1) of this subsection.

129         4. (1) A claimant shall be ineligible for waiting week credit, benefits or  
130 shared work benefits for any week for which he or she is receiving or has received  
131 remuneration exceeding his or her weekly benefit amount or shared work benefit  
132 amount in the form of:

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

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

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

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

156         5. A claimant shall be ineligible for waiting week credit or benefits for any  
157 week for which or a part of which he or she has received or is seeking  
158 unemployment benefits pursuant to an unemployment insurance law of another  
159 state or the United States; provided, that if it be finally determined that the

160 claimant is not entitled to such unemployment benefits, such ineligibility shall  
161 not apply.

162         6. (1) A claimant shall be ineligible for waiting week credit or benefits for  
163 any week for which the deputy finds that such claimant's total or partial  
164 unemployment is due to a stoppage of work which exists because of a labor  
165 dispute in the factory, establishment or other premises in which such claimant  
166 is or was last employed. In the event the claimant secures other employment  
167 from which he or she is separated during the existence of the labor dispute, the  
168 claimant must have obtained bona fide employment as a permanent employee for  
169 at least the major part of each of two weeks in such subsequent employment to  
170 terminate his or her ineligibility. If, in any case, separate branches of work  
171 which are commonly conducted as separate businesses at separate premises are  
172 conducted in separate departments of the same premises, each such department  
173 shall for the purposes of this subsection be deemed to be a separate factory,  
174 establishment or other premises. This subsection shall not apply if it is shown  
175 to the satisfaction of the deputy that:

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

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

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

191         7. On or after January 1, 1978, benefits shall not be paid to any  
192 individual on the basis of any services, substantially all of which consist of  
193 participating in sports or athletic events or training or preparing to so  
194 participate, for any week which commences during the period between two  
195 successive sport seasons (or similar periods) if such individual performed such

196 services in the first of such seasons (or similar periods) and there is a reasonable  
197 assurance that such individual will perform such services in the later of such  
198 seasons (or similar periods).

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

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

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

213 9. A claimant shall be ineligible for waiting week credit or benefits for any  
214 week such claimant has an outstanding penalty which was assessed based upon  
215 an overpayment of benefits, as provided for in subsection 9 of section 288.380.

216 10. The directors of the division of employment security and the division  
217 of workforce development shall submit to the governor, the speaker of the house  
218 of representatives, and the president pro tem of the senate no later than October  
219 15, 2006, a report outlining their recommendations for how to improve work  
220 search verification and claimant reemployment activities. The recommendations  
221 shall include, but not limited to how to best utilize "greathires.org", and how to  
222 reduce the average duration of unemployment insurance claims. Each calendar  
223 year thereafter, the directors shall submit a report containing their  
224 recommendations on these issues by December thirty-first of each year.

225 11. For purposes of this section, a claimant may satisfy reporting  
226 requirements provided under this section by reporting by internet communication  
227 or any other means deemed acceptable by the division of employment security.

288.130. 1. Each employing unit shall keep true and accurate payroll and  
2 other related records, containing such information as the division may by  
3 regulation prescribe for a period of at least three calendar years after the record  
4 was made. Such records shall be open to inspection and be subject to being

5 copied by authorized representatives of the division at any reasonable time and  
6 as often as may be necessary. Any authorized person engaged in administering  
7 this law may require from any employing unit any sworn or unsworn reports,  
8 with respect to individuals performing services for it, which are deemed necessary  
9 for the effective administration of this law.

10 2. All employers [required to report W-2 copy A information on magnetic  
11 media tape to the Social Security Administration pursuant to 26 CFR Section  
12 301.6011-2, or successor regulations, are likewise required to] **with fifty or**  
13 **more workers shall** report quarterly wage information due pursuant to section  
14 288.090 to the division [on magnetic tape or diskette] in [a] **an electronic**  
15 format prescribed by the division. **However, for good cause shown, the**  
16 **director may permit an employer with fifty or more workers to report**  
17 **quarterly wage information on a paper form approved by the division.**

18 3. Each employer shall post and maintain in places readily accessible to  
19 the employer's workers printed statements concerning benefit rights, claims for  
20 benefits and such other matters related to the administration of this law as the  
21 division may by regulation prescribe. Each employer shall supply to workers  
22 copies of any printed statements relating to claims for benefits when and as the  
23 division may by regulation prescribe. Such printed statements and other  
24 materials shall be supplied by the division without cost.

25 4. A deputy shall make an ex parte determination after investigation but  
26 without hearing with respect to any matter pertaining to the liability of an  
27 employing unit which does not involve a claimant. The deputy shall promptly  
28 notify any interested employing units of each such determination and the reason  
29 for it. The division shall grant a hearing before an appeals tribunal to any  
30 employing unit appealing from any such ex parte determination provided an  
31 appeal is filed in writing within thirty days following the date of notification or  
32 the mailing of such determination to the party's last known address. In the  
33 absence of an appeal any such determination shall become final at the expiration  
34 of a thirty-day period. The deputy may, however, at any time within a year from  
35 the date of the deputy's determination, for good cause, reconsider the  
36 determination and shall promptly notify all interested employing units of his  
37 amended determination and the reason for it.

38 5. The thirty-day period provided in subsection 4 of this section may, for  
39 good cause, be extended.

288.160. 1. If any employer neglects or refuses to make a report as



2 required by this [law] **chapter** the division shall make an estimate based on any  
3 information in its possession or that may come into its possession of the amount  
4 of wages paid by such employer for the period in respect to which the employer  
5 failed to make the report, and upon the basis of such estimated amount compute  
6 and assess the contributions and interest payable by such employer, adding to  
7 such sum a penalty as set forth in subsection 2 of this section. Promptly  
8 thereafter, the division shall give to such employer written notice of such  
9 estimated contributions, interest and penalties as so assessed, the notice to be  
10 served [personally or] by [registered] **certified** mail, directed to the last known  
11 [principal place of business] **address** of such employer [in this state or in any  
12 state in the event the employer has none in this state].

13         2. If any employer neglects or refuses to file any required report by the  
14 last day of the month following the due date there shall be imposed a penalty,  
15 equal to the greater of one hundred dollars or ten percent of the contributions  
16 required to be shown on the report, for each month or fraction thereof during  
17 which such failure continues, provided, however, that the penalty shall not exceed  
18 the greater of two hundred dollars or twenty percent of the contributions in the  
19 aggregate.

20         3. In any case in which any contributions, interest or penalties imposed  
21 by this [law] **chapter** are not paid when due, it shall be the duty of the division,  
22 when the amount of contributions, interest or penalties is determined, either by  
23 the report of the employer or by such investigation as the division may make, to  
24 assess the contributions, interest and penalties so determined against such  
25 employer and to certify the amount of such contributions, interest and penalties  
26 and give such employer written notice, served [personally or] by [registered]  
27 **certified** mail, directed to the last known address of such employer [in this state  
28 or in any state, in the event the employer has none in this state].

29         4. If fraud or evasion on the part of any employer is discovered by the  
30 division, the division shall determine the amount by which the state has been  
31 defrauded, shall add to the amount so determined a penalty equal to twenty-five  
32 percent thereof, and shall assess the same against the employer. The amount so  
33 assessed shall be immediately due and payable; provided, however, that the  
34 division shall promptly thereafter give to such employer written notice of such  
35 assessment.

36         5. Any employer against whom an assessment is made pursuant to the  
37 provisions of subsections 1, 2, 3 and 4 of this section may petition for

38 reassessment. The petition for such reassessment shall be filed with the division  
39 during the thirty-day period following the [day of service or] mailing of the notice  
40 of such assessment. In the absence of the filing of such a petition for  
41 reassessment the assessment shall become final upon the expiration of such a  
42 thirty-day period. Each such petition for reassessment shall set forth specifically  
43 and in detail the grounds upon which it is claimed the assessment is erroneous.

44 6. (1) In any case in which any contributions, interest or penalties  
45 imposed by [law] **this chapter** are not paid when due, the notice of the  
46 assessment of such contributions, interest and penalties shall be served upon or  
47 mailed to the employer within three years of the date upon which the payment  
48 of the contributions was due except that in any case of fraud or misrepresentation  
49 on the part of the employer, the notice of the assessment of the contributions,  
50 interest and penalties may be served [upon or mailed] **by mail** to the **last**  
51 **known address of such** employer at any time.

52 (2) The giving of the notice of the making of the assessment shall toll any  
53 statute of limitations on the collection of any contributions, interest and penalties  
54 assessed.

55 (3) In the event any employer is entitled to the advantage of the Soldiers'  
56 and Sailors' Civil Relief Act of 1940, or any amendment thereto, prior to the date  
57 any assessment becomes final, such employer shall be permitted to file a petition  
58 for reassessment at any time within ninety days following such employer's  
59 discharge from the armed services.

60 (4) The certificate of assessment which, pursuant to the provisions of  
61 section 288.170, may be filed with the clerk of the circuit court shall, upon such  
62 filing, thereafter be treated in all respects as a final judgment of the circuit court  
63 against the employer and the general statute of limitations applying to other  
64 judgments of courts of record shall apply.

288.245. The records of the division shall constitute prima facie evidence  
2 of the date of mailing **or the date of electronic transmission** of any notice,  
3 determination or other paper mailed **or electronically transmitted** under this  
4 chapter.

288.247. 1. **Except as otherwise required by law, any notice,**  
2 **determination, decision, or other paper required to be mailed by the**  
3 **division to an employing unit or claimant under this chapter may be**  
4 **transmitted solely by electronic means to any employing unit or**  
5 **claimant, unless an alternative method of transmittal is requested by**

6 the employing unit or claimant. The date the division transmits such  
7 notice, determination, decision, or other paper shall be the date of  
8 mailing or notification.

9       2. Any protest, notice of appeal, or other paper required to be  
10 filed with the division under this chapter may be filed by electronic  
11 means to the website specified by the division. The date and time of  
12 receipt shall be determined by the division's computer system.

13       3. Any function required to be performed by a representative of  
14 the division under this chapter may be performed by the computer or  
15 other automated means programmed and tested by a representative of  
16 the division, office of administration, or a vendor retained to perform  
17 such programming under the direction of the division or office of  
18 administration. However, any issue raised by an employer in a timely  
19 protest and any issue of fraud under section 288.380 shall be decided  
20 by a deputy of the division after investigation. Further, any appeal to  
21 a determination issued by the division or deputy shall be decided by an  
22 order or decision of an appeals referee after an opportunity for a fair  
23 hearing as provided in section 288.190.

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