

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 332
100TH GENERAL ASSEMBLY

Reported from the Committee on Small Business and Industry, April 18, 2019, with recommendation that the Senate Committee Substitute do pass.

0894S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 288.100, RSMo, section 288.036 as enacted by house bill no. 150, ninety-eighth general assembly, first regular session, and section 288.036 as enacted by house bill no. 1456, ninety-third general assembly, second regular session, and to enact in lieu thereof three new sections relating to employment security, with a delayed effective date for certain sections.

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

Section A. Section 288.100, RSMo, section 288.036 as enacted by house
2 bill no. 150, ninety-eighth general assembly, first regular session, and section
3 288.036 as enacted by house bill no. 1456, ninety-third general assembly, second
4 regular session, are repealed and three new sections enacted in lieu thereof, to
5 be known as sections 288.036, 288.100, and 288.135, to read as follows:

[288.036. 1. "Wages" means all remuneration, payable or
2 paid, for personal services including commissions and bonuses and,
3 except as provided in subdivision (7) of this section, the cash value
4 of all remuneration paid in any medium other than
5 cash. Gratuities, including tips received from persons other than
6 the employing unit, shall be considered wages only if required to be
7 reported as wages pursuant to the Federal Unemployment Tax Act,
8 26 U.S.C. Section 3306, and shall be, for the purposes of this
9 chapter, treated as having been paid by the employing
10 unit. Severance pay shall be considered as wages to the extent
11 required pursuant to the Federal Unemployment Tax Act, 26
12 U.S.C. Section 3306(b). Vacation pay, termination pay, severance

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

13 pay and holiday pay shall be considered as wages for the week with
14 respect to which it is payable. The total amount of wages derived
15 from severance pay, if paid to an insured in a lump sum, shall be
16 prorated on a weekly basis at the rate of pay received by the
17 insured at the time of termination for the purposes of determining
18 unemployment benefits eligibility. The term "wages" shall not
19 include:

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

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

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

33 (c) Death;

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

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

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

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

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

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

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

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

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

77 2. The increases or decreases to the state taxable wage base
78 for the remainder of calendar year 2004 shall be eight thousand
79 dollars, and the state taxable wage base in calendar year 2005, and
80 each calendar year thereafter, shall be determined by the
81 provisions within this subsection. On January 1, 2005, the state
82 taxable wage base for calendar year 2005, 2006, and 2007 shall be
83 eleven thousand dollars. The taxable wage base for calendar year
84 2008 shall be twelve thousand dollars. The state taxable wage

85 base for each calendar year thereafter shall be determined by the
86 average balance of the unemployment compensation trust fund of
87 the four preceding calendar quarters (September thirtieth, June
88 thirtieth, March thirty-first, and December thirty-first of the
89 preceding calendar year), less any outstanding federal Title XII
90 advances received pursuant to section 288.330, less the principal,
91 interest, and administrative expenses related to any credit
92 instrument issued under section 288.030, and less the principal,
93 interest, and administrative expenses related to any financial
94 agreements under subdivision (17) of subsection 2 of section
95 288.330. When the average balance of the unemployment
96 compensation trust fund of the four preceding quarters (September
97 thirtieth, June thirtieth, March thirty-first, and December
98 thirty-first of the preceding calendar year), as so determined is:

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

102 (2) Six hundred fifty million or more, then the state taxable
103 wage base for the subsequent calendar year shall be decreased by
104 five hundred dollars. In no event, however, shall the state taxable
105 wage base increase beyond twelve thousand five hundred dollars,
106 or decrease to less than seven thousand dollars. For calendar year
107 2009, the tax wage base shall be twelve thousand five hundred
108 dollars. For calendar year 2010 and each calendar year thereafter,
109 in no event shall the state taxable wage base increase beyond
110 thirteen thousand dollars, or decrease to less than seven thousand
111 dollars.

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

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

3 subdivision (7) of this [section] **subsection**, the cash value of all remuneration
4 paid in any medium other than cash. Gratuities, including tips received from
5 persons other than the employing unit, shall be considered wages only if required
6 to be reported as wages [pursuant to] **under** the Federal Unemployment Tax Act,
7 26 U.S.C. Section [3306] **3301, et seq., as amended**, and shall be, for the
8 purposes of this chapter, treated as having been paid by the employing
9 unit. Severance pay shall be considered as wages to the extent required
10 [pursuant to] **under** the Federal Unemployment Tax Act, 26 U.S.C. Section
11 3306(b). Vacation pay, **termination pay, severance pay**, and holiday pay shall
12 be considered as wages for the week with respect to which it is payable. **The**
13 **total amount of wages derived from severance pay, if paid to an insured**
14 **in a lump sum, shall be pro-rated on a weekly basis at the rate of pay**
15 **received by the insured at the time of termination for the purposes of**
16 **determining unemployment benefits eligibility.** The term "wages" shall not
17 include:

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

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

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

29 (c) Death;

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

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

38 (a) From or to a trust described in 26 U.S.C. Section 401(a) which is

39 exempt from tax pursuant to 26 U.S.C. Section 501(a) at the time of such
40 payment unless such payment is made to an employee of the trust as
41 remuneration for services rendered as such an employee and not as a beneficiary
42 of the trust; or

43 (b) Under or to an annuity plan which, at the time of such payments,
44 meets the requirements of Section 404(a)(2) of the Federal Internal Revenue Code
45 (26 U.S.C.A. Section 404);

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

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

53 (6) Remuneration paid in the form of meals provided to an individual in
54 the service of an employing unit where such remuneration is furnished on the
55 employer's premises and at the employer's convenience, except that remuneration
56 in the form of meals that is considered wages and required to be reported as
57 wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Section [3306]
58 **3301** shall be reported as wages as required thereunder;

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

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

66 2. The increases or decreases to the state taxable wage base for the
67 remainder of calendar year 2004 shall be eight thousand dollars, and the state
68 taxable wage base in calendar year 2005, and each calendar year thereafter, shall
69 be determined by the provisions within this subsection. On January 1, 2005, the
70 state taxable wage base for calendar year 2005, 2006, and 2007 shall be eleven
71 thousand dollars. The taxable wage base for calendar year 2008 shall be twelve
72 thousand dollars. The state taxable wage base for each calendar year thereafter
73 shall be determined by the average balance of the unemployment compensation
74 trust fund of the four preceding calendar quarters (September thirtieth, June

75 thirtieth, March thirty-first, and December thirty-first of the preceding calendar
76 year), less any outstanding federal Title XII advances received pursuant to
77 section 288.330, less the principal, interest, and administrative expenses related
78 to any credit instrument issued under section 288.030, and less the principal,
79 interest, and administrative expenses related to any financial agreements under
80 subdivision (17) of subsection 2 of section 288.330. When the average balance of
81 the unemployment compensation trust fund of the four preceding quarters
82 (September thirtieth, June thirtieth, March thirty-first, and December thirty-first
83 of the preceding calendar year), as so determined is:

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

86 (2) Six hundred fifty million or more, then the state taxable wage base for
87 the subsequent calendar year shall be decreased by five hundred dollars. In no
88 event, however, shall the state taxable wage base increase beyond twelve
89 thousand five hundred dollars, or decrease to less than seven thousand
90 dollars. For calendar year 2009, the tax wage base shall be twelve thousand five
91 hundred dollars. For calendar year 2010 and each calendar year thereafter, in
92 no event shall the state taxable wage base increase beyond thirteen thousand
93 dollars, or decrease to less than seven thousand dollars.

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

288.100. 1. (1) The division shall maintain a separate account for each
2 employer which is paying contributions, and shall credit each employer's account
3 with all contributions which each employer has paid. A separate account shall
4 be maintained for each employer making payments in lieu of contributions to
5 which shall be credited all such payments made. The account shall also show
6 payments due as provided in section 288.090. The division may close and cancel
7 such separate account after a period of four consecutive calendar years during
8 which such employer has had no employment in this state subject to
9 contributions. Nothing in this law shall be construed to grant any employer or
10 individuals in the employer's service prior claims or rights to the amounts paid
11 by the employer into the fund either on the employer's own behalf or on behalf

12 of such individuals. Except as provided in subdivision (4) of this subsection,
13 regular benefits and that portion of extended benefits not reimbursed by the
14 federal government paid to an eligible individual shall be charged against the
15 accounts of the individual's base period employers who are paying contributions
16 subject to the provisions of subdivision (4) of subsection 3 of section
17 288.090. With respect to initial claims filed after December 31, 1984, for benefits
18 paid to an individual based on wages paid by one or more employers in the base
19 period of the claim, the amount chargeable to each employer shall be obtained by
20 multiplying the benefits paid by a ratio obtained by dividing the base period
21 wages from such employer by the total wages appearing in the base
22 period. Except as provided in this subdivision, the maximum amount of extended
23 benefits paid to an individual and charged against the account of any employer
24 shall not exceed one-half of the product obtained by multiplying the benefits paid
25 by a ratio obtained by dividing the base period wages from such employer by the
26 total wages appearing in the base period. The provisions of this subdivision
27 notwithstanding, with respect to weeks of unemployment beginning after
28 December 31, 1978, the maximum amount of extended benefits paid to an
29 individual and charged against the account of an employer which is an employer
30 [pursuant to] **under** subdivision (3) of subsection 1 of section 288.032 and which
31 is paying contributions [pursuant to] **under** subsections 1 and 2 of section
32 288.090 shall not exceed the calculated entitlement for the extended benefit claim
33 based upon the wages appearing within the base period of the extended benefit
34 claim.

35 (2) Beginning as of June 30, 1951, and as of June thirtieth of each year
36 thereafter, any unassigned surplus in the unemployment compensation fund
37 which is five hundred thousand dollars or more in excess of five-tenths of one
38 percent of the total taxable wages paid by all employers for the preceding
39 calendar year as shown on the division's records on such June thirtieth shall be
40 credited on a pro rata basis to all employer accounts having a credit balance in
41 the same ratio that the balance in each such account bears to the total of the
42 credit balances subject to use for rate calculation purposes for the following year
43 in all such accounts on the same date. As used in this subdivision, the term
44 "unassigned surplus" means the amount by which the total cash balance in the
45 unemployment compensation fund exceeds a sum equal to the total of all
46 employer credit account balances. The amount thus prorated to each separate
47 employer's account shall for tax rating purposes be considered the same as

48 contributions paid by the employer and credited to the employer's account for the
49 period preceding the calculation date except that no such amount can be credited
50 against any contributions due or that may thereafter become due from such
51 employer.

52 (3) At the conclusion of each calendar quarter the division shall, within
53 thirty days, notify each employer by mail of the benefits paid to each claimant by
54 week as determined by the division which have been charged to such employer's
55 account subsequent to the last notice.

56 (4) (a) No benefits based on wages paid for services performed prior to the
57 date of any act for which a claimant is disqualified [pursuant to] **under** section
58 288.050 shall be chargeable to any employer directly involved in such
59 disqualifying act.

60 (b) In the event the deputy has in due course determined [pursuant to]
61 **under** paragraph (a) of subdivision (1) of subsection 1 of section 288.050 that a
62 claimant quit his or her work with an employer for the purpose of accepting a
63 more remunerative job with another employer which the claimant did accept and
64 earn some wages therein, no benefits based on wages paid prior to the date of the
65 quit shall be chargeable to the employer the claimant quit.

66 (c) In the event the deputy has in due course determined [pursuant to]
67 **under** paragraph (b) of subdivision (1) of subsection 1 of section 288.050 that a
68 claimant quit temporary work in employment with an employer to return to the
69 claimant's regular employer, then, only for the purpose of charging base period
70 employers, all of the wages paid by the employer who furnished the temporary
71 employment shall be combined with the wages actually paid by the regular
72 employer as if all such wages had been actually paid by the regular
73 employer. Further, charges for benefits based on wages paid for part-time work
74 shall be removed from the account of the employer furnishing such part-time
75 work if that employer continued to employ the individual claiming such benefits
76 on a regular recurring basis each week of the claimant's claim to at least the
77 same extent that the employer had previously employed the claimant and so
78 informs the division within thirty days from the date of notice of benefit charges.

79 (d) No charge shall be made against an employer's account in respect to
80 benefits paid an individual if the gross amount of wages paid by such employer
81 to such individual is four hundred dollars or less during the individual's base
82 period on which the individual's benefit payments are based. Further, no charge
83 shall be made against any employer's account in respect to benefits paid any

84 individual unless such individual was in employment with respect to such
85 employer longer than a probationary period of [twenty-eight] **ninety** days, if such
86 probationary period of employment has been reported to the division as required
87 by regulation.

88 (e) In the event the deputy has in due course determined [pursuant to]
89 **under** paragraph (c) of subdivision (1) of subsection 1 of section 288.050 that a
90 claimant is not disqualified, no benefits based on wages paid for work prior to the
91 date of the quit shall be chargeable to the employer the claimant quit.

92 (f) In the event the deputy has in due course determined under paragraph
93 (e) of subdivision (1) of subsection 1 of section 288.050 that a claimant is not
94 disqualified, no benefits based on wages paid for work prior to the date of the quit
95 shall be chargeable to the employer the claimant quit.

96 (g) Nothing in paragraph (b), (c), (d), (e), or (f) of this subdivision shall in
97 any way affect the benefit amount, duration of benefits or the wage credits of the
98 claimant.

99 2. The division may prescribe regulations for the establishment,
100 maintenance, and dissolution of joint accounts by two or more employers, and
101 shall, in accordance with such regulations and upon application by two or more
102 employers to establish such an account, or to merge their several individual
103 accounts in a joint account, maintain such joint account as if it constituted a
104 single employer's account.

105 3. The division may by regulation provide for the compilation and
106 publication of such data as may be necessary to show the amounts of benefits not
107 charged to any individual employer's account classified by reason no such charge
108 was made and to show the types and amounts of transactions affecting the
109 unemployment compensation fund.

288.135. 1. Each employer that is liable for contributions under
2 this chapter, except employers with a contribution rate equal to zero,
3 shall pay an annual unemployment automation adjustment in an
4 amount equal to fifteen one-thousandths of one percent of such
5 employer's total taxable wages for the twelve-month period ending the
6 preceding June thirtieth. However, the division may reduce the
7 foregoing percentage to ensure that the total amount of adjustment due
8 from all employers under this subsection shall not exceed four million
9 dollars annually. Each employer liable to pay such adjustment shall be
10 notified of the amount due under this subsection by March thirty-first

11 of each year and such amount shall be considered delinquent thirty
12 days thereafter. Delinquent unemployment automation adjustment
13 amounts shall be collected in the manner provided under sections
14 288.160 and 288.170. All moneys collected under this subsection shall
15 be deposited in the unemployment automation fund established in
16 section 288.132.

17 2. For each calendar year, the otherwise applicable
18 unemployment contribution rate of each employer liable for
19 contributions under this chapter shall be reduced by fifteen one-
20 thousandths of one percent, except such contribution rate shall not be
21 less than zero.

Section B. The repeal and reenactment of section 288.100 and the
2 enactment of section 288.135 of this act shall become effective on January 1,
3 2020.

✓

Bill

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