

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 32
90TH GENERAL ASSEMBLY
1999

L0510.02T

AN ACT

To repeal sections 288.038, 288.040 and 288.126, RSMo Supp. 1998, relating to the rights and benefits of employees, and to enact in lieu thereof five new sections relating to the same subject.

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

Section A. Sections 288.038, 288.040 and 288.126, RSMo Supp. 1998, are repealed and five new sections enacted in lieu thereof, to be known as sections 288.038, 288.040, 288.041, 288.126 and 290.152, to read as follows:

288.038. [1. With respect to initial claims filed after December 31, 1991, and before January 1, 1993:

(1) If the employers' contribution rates under section 288.120 are not increased pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred eighty dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount;

(2) If the contributions which are due but unpaid on November 1, 1991, do not exceed the contributions due but unpaid on November 1, 1990, by more than fifty percent and the employers' contribution rates under section 288.120 are increased pursuant to section 288.121 by twenty percent or less, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred

seventy-five dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount;

(3) If the contributions which are due but unpaid on November 1, 1991, do not exceed the contributions due but unpaid on November 1, 1990, by more than fifty percent and the employers' contribution rates under section 288.120 are increased pursuant to section 288.121 by thirty percent, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred seventy dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

2. With respect to initial claims filed after December 31, 1992, and before January 1, 1998:

(1) If the maximum weekly benefit amount for initial claims filed after December 31, 1991, and before January 1, 1993, was one hundred seventy dollars as calculated under subdivision (3) of subsection 1 of this section and contribution rates for calendar year 1993 or any year thereafter, as calculated under section 288.120, are increased by thirty percent pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred seventy dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest full dollar amount;

(2) If the maximum weekly benefit amount for initial claims filed after December 31, 1991, and before January 1, 1993, was one hundred seventy dollars as calculated under subdivision (3) of subsection 1 of this section and contribution rates for calendar year 1993 or any year thereafter, as calculated under section 288.120, are increased by ten or twenty percent pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred seventy-five dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount;

(3) If the maximum weekly benefit amount for initial claims filed after December 31, 1991, and before January 1, 1993, was one hundred seventy dollars as calculated under subdivision (3) of subsection 1 of this section and contribution rates for calendar year 1993 or any year thereafter, as calculated under section 288.120, are not increased pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred eighty dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower

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

full dollar amount;

(4) If the maximum weekly benefit amount for initial claims filed after December 31, 1991, and before January 1, 1993, was one hundred seventy-five dollars as calculated under subdivision (2) of subsection 1 of this section and contribution rates for calendar year 1993 or any year thereafter, as calculated under section 288.120, are increased by thirty percent or more pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred seventy-five dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount;

(5) If the maximum weekly benefit amount for initial claims filed after December 31, 1991, and before January 1, 1993, was one hundred seventy-five dollars as calculated under subdivision (2) of subsection 1 of this section and contribution rates for calendar year 1993 or any year thereafter, as calculated under section 288.120, are increased by twenty percent or less pursuant to section 288.121, "weekly benefit amount" means four and five-tenths percent of the total wages paid to an eligible insured worker during that quarter of his base period in which his wages were highest, but not to exceed one hundred eighty dollars, and, if such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

3.] With respect to initial claims filed during calendar years 1998, 1999, 2000 and 2001 and each calendar year thereafter, the maximum weekly benefit amount means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred five dollars in the calendar year 1998, two hundred twenty dollars in the calendar year 1999, two hundred thirty-five dollars in the calendar year 2000, and two hundred fifty dollars in the calendar year 2001, and each calendar year thereafter. **If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.**

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

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

(2) [He] **The claimant** is able to work and is available for work. No person shall be deemed available for work unless [he] **such person** has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall

be considered not available for work, [under] **pursuant to** this subdivision, solely because he **or she** is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible [under] **pursuant to** this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved [under] **pursuant to** section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended); or

(b) The claimant is temporarily unemployed through no fault of his **or her** own and has a definite recall date within eight weeks of his **or her** first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended at the discretion of the director;

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

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

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

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

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

Ineligibility [under] **pursuant to** this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which [he] **the claimant** claims benefits he has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. The one-week waiting period shall become compensable after unemployment during which benefits are payable for nine consecutive weeks. No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which [he] **the claimant** claims benefits;

(5) [He] **The claimant** has made a claim for benefits;

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

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

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

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he **or she** is or has been suspended by his **or her** most recent employer for misconduct connected with his **or her** work.

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

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

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

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

(d) With respect to services described in paragraphs (a) and (b) of this subdivision,

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

(2) If compensation is denied for any week [under] **pursuant to** paragraph (b) or (d) of subdivision (1) of this subsection, to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

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

(a) Compensation for temporary partial disability [under] **pursuant to** the workers' compensation law of any state or [under] **pursuant to** a similar law of the United States;

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

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

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad

Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received [under] **pursuant to** such federal law shall be deductible from the amount of benefits received [under] **pursuant to** this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he **or she** has received or is seeking unemployment benefits [under] **pursuant to** an unemployment insurance law of another state or the United States; provided, that if it be finally determined that [he] **the claimant** is not entitled to such unemployment benefits, such ineligibility shall not apply.

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

(a) [He] **The claimant** is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

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

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

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during

the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

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

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

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of [his] **such individual's** alien status shall be made except upon a reponderance of the evidence.

288.041. Individuals whose services are not defined as employment pursuant to subsection 8 of section 288.034 or whose services are excluded from the term "employment" in subdivision (1) or (2) of subsection 9 of section 288.034 shall be provided a written notice by the employing unit that wages earned by the individual for services performed for this employing unit will not be used to determine insured worker status for unemployment benefits. Such notice shall be provided to each individual:

(1) **At the time of initial employment, for all initial employments occurring on or after August 28, 1999;**

(2) **Upon the change in status of the employing unit's liability pursuant to this chapter;**

(3) **For all individuals employed by such employing unit as of August 28, 1999, within thirty days of August 28, 1999.**

288.126. 1. If an employer **with a positive experience rate account balance** is not eligible for a rate calculation after once becoming eligible because the employer did not have twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits, [his] **such employer's** rate shall be no less than [five and four-tenths] **two and seven-tenths** percent.

2. If an employer with a deficit experience rate account balance is not

eligible for a rate calculation after once becoming eligible because the employer did not have twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits, such employer's rate shall be no less than five and four-tenths percent.

290.152. 1. As used in this section, the following terms shall mean:

(1) "Employer", any individual, organization, partnership, political subdivision, corporation or other legal entity which has or had in the entity's employ one or more individuals performing services for the entity within this state;

(2) "Prospective employer", any employer, as defined in this subsection, to which an individual has made application for employment, either oral or written, or forwarded a resume or other correspondence expressing an interest in employment.

2. An employer may:

(1) Respond in writing to a written request concerning a current or former employee from an entity or person which the employer reasonably believes to be a prospective employer of such employee; and

(2) Disclose the nature and character of service rendered by such employee to such employer and the duration thereof; and

(3) Truly state for what cause, if any, such employee was discharged or voluntarily quit such service.

The provisions of this section shall apply regardless of whether the employee becomes employed by the prospective employer prior to receipt of the former employer's written response. The information provided pursuant to this section shall be consistent with the content of any service letter provided pursuant to section 290.140 for the same employee.

3. The employer shall send a copy of any letter provided pursuant to subsection 2 of this section to the current employee or former employee at the employee's last known address. The current or former employee may request from the employer a copy of the letter provided pursuant to subsection 2 of this section for up to one year following the date of such letter.

4. For purposes of this section, an employer shall be immune from civil liability for any response made pursuant to this section or for any consequences of such response, unless such response was false and made with knowledge that it was false or with reckless disregard for whether such response was true or false.

5. Any employer who violates the provisions of subsection 2 of this section shall be liable for compensatory damages but not punitive damages.

6. Any letter issued pursuant to this section shall not be admitted as evidence in an unemployment compensation claim.

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President of the Senate

Speaker of the House of Representatives

Governor