

## SENATE SUBSTITUTE

FOR

SENATE BILL NO. 28

## AN ACT

To repeal sections 288.030 and 288.050, RSMo, and to enact in lieu thereof two new sections relating to disqualification from unemployment benefits.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Sections 288.030 and 288.050, RSMo, are repealed  
2 and two new sections enacted in lieu thereof, to be known as  
3 sections 288.030 and 288.050, to read as follows:

4           288.030. 1. As used in this chapter, unless the context  
5 clearly requires otherwise, the following terms mean:

6           (1) "Appeals tribunal", a referee or a body consisting of  
7 three referees appointed to conduct hearings and make decisions  
8 on appeals from administrative determinations, petitions for  
9 reassessment, and claims referred pursuant to subsection 2 of  
10 section 288.070;

11           (2) "Base period", the first four of the last five  
12 completed calendar quarters immediately preceding the first day  
13 of an individual's benefit year;

14           (3) "Benefit year", the one-year period beginning with the  
15 first day of the first week with respect to which an insured  
16 worker first files an initial claim for determination of such  
17 worker's insured status, and thereafter the one-year period  
18 beginning with the first day of the first week with respect to

1    which the individual, providing the individual is then an insured  
2    worker, next files such an initial claim after the end of the  
3    individual's last preceding benefit year;

4           (4)  "Benefits", the money payments payable to an insured  
5    worker, as provided in this chapter, with respect to such insured  
6    worker's unemployment;

7           (5)  "Calendar quarter", the period of three consecutive  
8    calendar months ending on March thirty-first, June thirtieth,  
9    September thirtieth, or December thirty-first;

10          (6)  "Claimant", an individual who has filed an initial  
11   claim for determination of such individual's status as an insured  
12   worker, a notice of unemployment, a certification for waiting  
13   week credit, or a claim for benefits;

14          (7)  "Commission", the labor and industrial relations  
15   commission of Missouri;

16          (8)  "Common paymaster", two or more related corporations in  
17   which one of the corporations has been designated to disburse  
18   remuneration to concurrently employed individuals of any of the  
19   related corporations;

20          (9)  "Contributions", the money payments to the unemployment  
21   compensation fund required by this chapter, exclusive of interest  
22   and penalties;

23          (10) "Decision", a ruling made by an appeals tribunal or  
24   the commission after a hearing;

25          (11) "Deputy", a representative of the division designated  
26   to make investigations and administrative determinations on  
27   claims or matters of employer liability or to perform related  
28   work;

1           (12) "Determination", any administrative ruling made by the  
2 division without a hearing;

3           (13) "Director", the administrative head of the division of  
4 employment security;

5           (14) "Division", the division of employment security which  
6 administers this chapter;

7           (15) "Employing unit", any individual, organization,  
8 partnership, corporation, common paymaster, or other legal  
9 entity, including the legal representatives thereof, which has  
10 or, subsequent to June 17, 1937, had in its employ one or more  
11 individuals performing services for it within this state. All  
12 individuals performing services within this state for any  
13 employing unit which maintains two or more separate  
14 establishments within this state shall be deemed to be employed  
15 by a single employing unit for all the purposes of this chapter.  
16 Each individual engaged to perform or to assist in performing the  
17 work of any person in the service of an employing unit shall be  
18 deemed to be engaged by such employing unit for all the purposes  
19 of this chapter, whether such individual was engaged or paid  
20 directly by such employing unit or by such person, provided the  
21 employing unit had actual or constructive knowledge of the work;

22           (16) "Employment office", a free public employment office  
23 operated by this or any other state as a part of a state  
24 controlled system of public employment offices including any  
25 location designated by the state as being a part of the one-stop  
26 career system;

27           (17) "Equipment", a motor vehicle, straight truck, tractor,  
28 semi-trailer, full trailer, any combination of these and any

1 other type of equipment used by authorized carriers in the  
2 transportation of property for hire;

3 (18) "Fund", the unemployment compensation fund established  
4 by this chapter;

5 (19) "Governmental entity", the state, any political  
6 subdivision thereof, any instrumentality of any one or more of  
7 the foregoing which is wholly owned by this state and one or more  
8 other states or political subdivisions and any instrumentality of  
9 this state or any political subdivision thereof and one or more  
10 other states or political subdivisions;

11 (20) "Initial claim", an application, in a form prescribed  
12 by the division, made by an individual for the determination of  
13 the individual's status as an insured worker;

14 (21) "Insured work", employment in the service of an  
15 employer;

16 (22) (a) As to initial claims filed after December 31,  
17 1990, "insured worker", a worker who has been paid wages for  
18 insured work in the amount of one thousand dollars or more in at  
19 least one calendar quarter of such worker's base period and total  
20 wages in the worker's base period equal to at least one and  
21 one-half times the insured wages in that calendar quarter of the  
22 base period in which the worker's insured wages were the highest,  
23 or in the alternative, a worker who has been paid wages in at  
24 least two calendar quarters of such worker's base period and  
25 whose total base period wages are at least one and one-half times  
26 the maximum taxable wage base, taxable to any one employer, in  
27 accordance with subsection 2 of section 288.036. For the  
28 purposes of this definition, "wages" shall be considered as wage

1 credits with respect to any benefit year, only if such benefit  
2 year begins subsequent to the date on which the employing unit by  
3 which such wages were paid has become an employer;

4 (b) As to initial claims filed after December 31, 2004,  
5 wages for insured work in the amount of one thousand two hundred  
6 dollars or more, after December 31, 2005, one thousand three  
7 hundred dollars or more, after December 31, 2006, one thousand  
8 four hundred dollars or more, after December 31, 2007, one  
9 thousand five hundred dollars or more in at least one calendar  
10 quarter of such worker's base period and total wages in the  
11 worker's base period equal to at least one and one-half times the  
12 insured wages in that calendar quarter of the base period in  
13 which the worker's insured wages were the highest, or in the  
14 alternative, a worker who has been paid wages in at least two  
15 calendar quarters of such worker's base period and whose total  
16 base period wages are at least one and one-half times the maximum  
17 taxable wage base, taxable to any one employer, in accordance  
18 with subsection 2 of section 288.036;

19 (23) "Misconduct", [an act of wanton or willful disregard  
20 of the employer's interest, a deliberate violation of the  
21 employer's rules, a disregard of standards of behavior which the  
22 employer has the right to expect of his or her employee, or  
23 negligence in such degree or recurrence as to manifest  
24 culpability, wrongful intent or evil design, or show an  
25 intentional and substantial disregard of the employer's interest  
26 or of the employee's duties and obligations to the employer]  
27 misconduct reasonably related to the job environment and the job  
28 performance regardless of whether the misconduct occurs at the

workplace or during work hours, includes:

(a) Conduct or a failure to act demonstrating knowing disregard of the employer's interest or a knowing violation of the standards which the employer expects of his or her employee;

(b) Conduct or a failure to act demonstrating carelessness or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or a knowing disregard of the employer's interest or of the employee's duties and obligations to the employer;

(c) Violation of an employer's no-call, no-show policy; chronic absenteeism or tardiness in violation of a known policy of the employer; or one or more unapproved absences following a written reprimand or warning relating to an unapproved absence;

(d) A knowing violation of a state standard or regulation by an employee of an employer licensed or certified by the state, which would cause the employer to be sanctioned or have its license or certification suspended or revoked; or

(e) A violation of an employer's rule, unless the employee can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rules requirements; or

b. The rule is not lawful;

(24) "Referee", a representative of the division designated to serve on an appeals tribunal;

(25) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

(26) "Temporary employee", an employee assigned to work for

1 the clients of a temporary help firm;

2 (27) "Temporary help firm", a firm that hires its own  
3 employees and assigns them to clients to support or supplement  
4 the clients' workforce in work situations such as employee  
5 absences, temporary skill shortages, seasonal workloads, and  
6 special assignments and projects;

7 (28) (a) An individual shall be deemed "totally  
8 unemployed" in any week during which the individual performs no  
9 services and with respect to which no wages are payable to such  
10 individual;

11 (b) a. An individual shall be deemed "partially  
12 unemployed" in any week of less than full-time work if the wages  
13 payable to such individual for such week do not equal or exceed  
14 the individual's weekly benefit amount plus twenty dollars;

15 b. Effective for calendar year 2007 and each year  
16 thereafter, an individual shall be deemed "partially unemployed"  
17 in any week of less than full-time work if the wages payable to  
18 such individual for such week do not equal or exceed the  
19 individual's weekly benefit amount plus twenty dollars or twenty  
20 percent of his or her weekly benefit amount, whichever is  
21 greater;

22 (c) An individual's "week of unemployment" shall begin the  
23 first day of the calendar week in which the individual registers  
24 at an employment office except that, if for good cause the  
25 individual's registration is delayed, the week of unemployment  
26 shall begin the first day of the calendar week in which the  
27 individual would have otherwise registered. The requirement of  
28 registration may by regulation be postponed or eliminated in

1 respect to claims for partial unemployment or may by regulation  
2 be postponed in case of a mass layoff due to a temporary  
3 cessation of work;

4 (29) "Waiting week", the first week of unemployment for  
5 which a claim is allowed in a benefit year or if no waiting week  
6 has occurred in a benefit year in effect on the effective date of  
7 a shared work plan, the first week of participation in a shared  
8 work unemployment compensation program pursuant to section  
9 288.500.

10 2. The Missouri average annual wage shall be computed as of  
11 June thirtieth of each year, and shall be applicable to the  
12 following calendar year. The Missouri average annual wage shall  
13 be calculated by dividing the total wages reported as paid for  
14 insured work in the preceding calendar year by the average of  
15 mid-month employment reported by employers for the same calendar  
16 year. The Missouri average weekly wage shall be computed by  
17 dividing the Missouri average annual wage as computed in this  
18 subsection by fifty-two.

19 288.050. 1. Notwithstanding the other provisions of this  
20 law, a claimant shall be disqualified for waiting week credit or  
21 benefits until after the claimant has earned wages for work  
22 insured pursuant to the unemployment compensation laws of any  
23 state equal to ten times the claimant's weekly benefit amount if  
24 the deputy finds:

25 (1) That the claimant has left work voluntarily without  
26 good cause attributable to such work or to the claimant's  
27 employer. A temporary employee of a temporary help firm will be  
28 deemed to have voluntarily quit employment if the employee does



1 not contact the temporary help firm for reassignment prior to  
2 filing for benefits. Failure to contact the temporary help firm  
3 will not be deemed a voluntary quit unless the claimant has been  
4 advised of the obligation to contact the firm upon completion of  
5 assignments and that unemployment benefits may be denied for  
6 failure to do so. "Good cause", for the purposes of this  
7 subdivision, shall include only that cause which would compel a  
8 reasonable employee to cease working or which would require  
9 separation from work due to illness or disability. The claimant  
10 shall not be disqualified:

11 (a) If the deputy finds the claimant quit such work for the  
12 purpose of accepting a more remunerative job which the claimant  
13 did accept and earn some wages therein;

14 (b) If the claimant quit temporary work to return to such  
15 claimant's regular employer; or

16 (c) If the deputy finds the individual quit work, which  
17 would have been determined not suitable in accordance with  
18 paragraphs (a) and (b) of subdivision (3) of this subsection,  
19 within twenty-eight calendar days of the first day worked;

20 (d) As to initial claims filed after December 31, 1988, if  
21 the claimant presents evidence supported by competent medical  
22 proof that she was forced to leave her work because of pregnancy,  
23 notified her employer of such necessity as soon as practical  
24 under the circumstances, and returned to that employer and  
25 offered her services to that employer as soon as she was  
26 physically able to return to work, as certified by a licensed and  
27 practicing physician, but in no event later than ninety days  
28 after the termination of the pregnancy. An employee shall have

1    been employed for at least one year with the same employer before  
2    she may be provided benefits pursuant to the provisions of this  
3    paragraph;

4           (e)   If the deputy finds that, due to the spouse's mandatory  
5    and permanent military change of station order, the claimant quit  
6    work to relocate with the spouse to a new residence from which it  
7    is impractical to commute to the place of employment and the  
8    claimant remained employed as long as was reasonable prior to the  
9    move. The claimant's spouse shall be a member of the U.S. Armed  
10   Forces who is on active duty, or a member of the National Guard  
11   or other reserve component of the U.S. Armed Forces who is on  
12   active National Guard or reserve duty. The provisions of this  
13   paragraph shall only apply to individuals who have been  
14   determined to be an insured worker as provided in subdivision  
15   (22) of subsection 1 of section 288.030;

16           (2)   That the claimant has retired pursuant to the terms of  
17   a labor agreement between the claimant's employer and a union  
18   duly elected by the employees as their official representative or  
19   in accordance with an established policy of the claimant's  
20   employer; or

21           (3)   That the claimant failed without good cause either to  
22   apply for available suitable work when so directed by a deputy of  
23   the division or designated staff of an employment office as  
24   defined in subsection 1 of section 288.030, or to accept suitable  
25   work when offered the claimant, either through the division or  
26   directly by an employer by whom the individual was formerly  
27   employed, or to return to the individual's customary  
28   self-employment, if any, when so directed by the deputy. An

1 offer of work shall be rebuttably presumed if an employer  
2 notifies the claimant in writing of such offer by sending an  
3 acknowledgment via any form of certified mail issued by the  
4 United States Postal Service stating such offer to the claimant  
5 at the claimant's last known address. Nothing in this  
6 subdivision shall be construed to limit the means by which the  
7 deputy may establish that the claimant has or has not been  
8 sufficiently notified of available work.

9 (a) In determining whether or not any work is suitable for  
10 an individual, the division shall consider, among other factors  
11 and in addition to those enumerated in paragraph (b) of this  
12 subdivision, the degree of risk involved to the individual's  
13 health, safety and morals, the individual's physical fitness and  
14 prior training, the individual's experience and prior earnings,  
15 the individual's length of unemployment, the individual's  
16 prospects for securing work in the individual's customary  
17 occupation, the distance of available work from the individual's  
18 residence and the individual's prospect of obtaining local work;  
19 except that, if an individual has moved from the locality in  
20 which the individual actually resided when such individual was  
21 last employed to a place where there is less probability of the  
22 individual's employment at such individual's usual type of work  
23 and which is more distant from or otherwise less accessible to  
24 the community in which the individual was last employed, work  
25 offered by the individual's most recent employer if similar to  
26 that which such individual performed in such individual's last  
27 employment and at wages, hours, and working conditions which are  
28 substantially similar to those prevailing for similar work in

1 such community, or any work which the individual is capable of  
2 performing at the wages prevailing for such work in the locality  
3 to which the individual has moved, if not hazardous to such  
4 individual's health, safety or morals, shall be deemed suitable  
5 for the individual;

6 (b) Notwithstanding any other provisions of this law, no  
7 work shall be deemed suitable and benefits shall not be denied  
8 pursuant to this law to any otherwise eligible individual for  
9 refusing to accept new work under any of the following  
10 conditions:

11 a. If the position offered is vacant due directly to a  
12 strike, lockout, or other labor dispute;

13 b. If the wages, hours, or other conditions of the work  
14 offered are substantially less favorable to the individual than  
15 those prevailing for similar work in the locality;

16 c. If as a condition of being employed the individual would  
17 be required to join a company union or to resign from or refrain  
18 from joining any bona fide labor organization.

19 2. If a deputy finds that a claimant has been discharged  
20 for misconduct connected with the claimant's work, such claimant  
21 shall be disqualified for waiting week credit and benefits, and  
22 no benefits shall be paid nor shall the cost of any benefits be  
23 charged against any employer for any period of employment within  
24 the base period until the claimant has earned wages for work  
25 insured under the unemployment laws of this state or any other  
26 state as prescribed in this section. In addition to the  
27 disqualification for benefits pursuant to this provision the  
28 division may in the more aggravated cases of misconduct cancel

1 all or any part of the individual's wage credits, which were  
2 established through the individual's employment by the employer  
3 who discharged such individual, according to the seriousness of  
4 the misconduct. A disqualification provided for pursuant to this  
5 subsection shall not apply to any week which occurs after the  
6 claimant has earned wages for work insured pursuant to the  
7 unemployment compensation laws of any state in an amount equal to  
8 six times the claimant's weekly benefit amount. Should a  
9 claimant be disqualified on a second or subsequent occasion  
10 within the base period or subsequent to the base period the  
11 claimant shall be required to earn wages in an amount equal to or  
12 in excess of six times the claimant's weekly benefit amount for  
13 each disqualification.

14 3. [Absenteeism or tardiness may constitute a rebuttable  
15 presumption of misconduct, regardless of whether the last  
16 incident alone constitutes misconduct, if the discharge was the  
17 result of a violation of the employer's attendance policy,  
18 provided the employee had received knowledge of such policy prior  
19 to the occurrence of any absence or tardy upon which the  
20 discharge is based.

21 4.] Notwithstanding the provisions of subsection 1 of this  
22 section, a claimant may not be determined to be disqualified for  
23 benefits because the claimant is in training approved pursuant to  
24 Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A.  
25 Sec. 2296, as amended), or because the claimant left work which  
26 was not suitable employment to enter such training. For the  
27 purposes of this subsection "suitable employment" means, with  
28 respect to a worker, work of a substantially equal or higher

1 skill level than the worker's past adversely affected employment,  
2 and wages for such work at not less than eighty percent of the  
3 worker's average weekly wage as determined for the purposes of  
4 the Trade Act of 1974.

5