

SECOND REGULAR SESSION

SENATE BILL NO. 607

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4718S.02I

AN ACT

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

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

Section A. Section 143.121, RSMo, is repealed and ten new sections
2 enacted in lieu thereof, to be known as sections 143.121, 285.400, 285.405,
3 285.410, 285.415, 285.420, 285.425, 285.430, 285.435, and 285.440, to read as
4 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107 (a) Livestock Forage Disaster Program;

108 (b) Livestock Indemnity Program;

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

111 (d) Emergency Conservation Program;

112 (e) Noninsured Crop Disaster Assistance Program;

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

114 (g) Annual Forage Pilot Program;

115 (h) Livestock Risk Protection Insurance Plan; and

116 (i) Livestock Gross Margin insurance plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) A treating physician;

24 (b) A health care provider;

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

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

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

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

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

44 (3) The probable duration of the condition;

45 (4) An estimate of the amount of time that the physician or
46 health care provider believes the employee needs to care for the family
47 member or himself or herself; and

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

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

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

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

66 (1) Identification of diagnoses;

67 (2) Identification of symptoms;

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

71 (a) The physician or health care provider treating the employee
72 or family member of the employee;

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

76 (c) An examining physician or other representative of the
77 department;

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

285.415. Employees shall provide at least thirty days advance

2 notice to their employer before family and medical leave is to begin if
3 the need for the leave is foreseeable. If thirty days notice is not
4 practicable, notice shall be given to the employer as soon as
5 practicable.

285.420. 1. Except as provided in subsection 4 of this section, an
2 employee may file a notice of appeal from any determination of
3 eligibility for benefits made by the department by mail or in person
4 within thirty days after the date on which a copy of the department's
5 decision was received by the employee. Upon receipt of the notice of
6 appeal, the department shall request the assignment of an
7 administrative law judge in accordance with chapter 536 to conduct a
8 hearing and issue a proposed decision and order. The hearing shall be
9 conducted in accordance with chapter 536.

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

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

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

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

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

33 (1) To conform to a final court decision applicable to either an

34 initial determination or a determination of denial or allowance of
35 benefits;

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

38 (3) In the case of misrepresentation or willful failure to report
39 a material fact.

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

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

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

11 (a) The amount of:

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

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

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

24 (c) An additional amount as liquidated damages equal to the sum
25 of the amount described in paragraph (a) of this subdivision and the
26 interest described in paragraph (b) of this subdivision, except that if a

27 person who has violated subsection 1 of this section proves to the
28 satisfaction of the court that the act or omission was in good faith and
29 that the person had reasonable grounds for believing that the act or
30 omission was not a violation, such court may reduce the amount of such
31 liquidated damages.

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

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

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

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

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

12 2. Not later than three years after the effective date of sections
13 285.400 to 285.440, the state auditor shall submit to the general
14 assembly a report on the Missouri earned family and medical leave
15 benefits paid for any month during the one-year period beginning on
16 the effective date of sections 285.400 to 285.416. The report shall

17 include the following:

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

21 (2) An identification of the total number of requests for review
22 of an initial adverse determination of eligibility for such benefits made,
23 and the average number of days between when such review is
24 requested and when a final determination of eligibility is made; and

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

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

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

13 2. (1) In order to provide funding to implement the provisions
14 of sections 285.400 to 285.440, employees shall contribute one quarter
15 of one percent of their average weekly pay to the Missouri earned
16 family and medical leave fund beginning January 1, 2019.

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

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

26 **(4) No employee shall receive benefits from the fund until**
27 **January 1, 2020.**

285.440. Any rule or portion of a rule, as that term is defined in
2 **section 536.010 that is created under the authority delegated in sections**
3 **285.400 to 285.435 shall become effective only if it complies with and is**
4 **subject to all of the provisions of chapter 536, and, if applicable, section**
5 **536.028. This section and chapter 536 are nonseverable and if any of**
6 **the powers vested with the general assembly pursuant to chapter 536,**
7 **to review, to delay the effective date, or to disapprove and annul a rule**
8 **are subsequently held unconstitutional, then the grant of rulemaking**
9 **authority and any rule proposed or adopted after November 7, 2018,**
10 **shall be invalid and void.**

 Section B. This act is hereby submitted to the qualified voters of this state
2 for approval or rejection at an election which is hereby ordered and which shall
3 be held and conducted on Tuesday next following the first Monday in November,
4 2018, pursuant to the laws and constitutional provisions of this state for the
5 submission of referendum measures by the general assembly, and this act shall
6 become effective when approved by a majority of the votes cast thereon at such
7 election and not otherwise.

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