SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1713

97TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Pensions, May 15, 2014, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

5756S.02C

AN ACT

To repeal section 288.500, RSMo, and to enact in lieu thereof one new section relating to the shared work unemployment compensation program, with an emergency clause.

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

Section A. Section 288.500, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 288.500, to read as follows:

288.500. 1. There is created under this section a voluntary "Shared Work
2 Unemployment Compensation Program". In connection therewith, the division
3 may adopt rules and establish procedures, not inconsistent with this section,
4 which are necessary to administer this program.

5 2. As used in this section, the following terms mean:

6 (1) "Affected unit", a specified department, shift, or other unit of three or
7 more employees which is designated by an employer to participate in a shared
8 work plan;

9 (2) "Division", the division of employment security;

10 (3) "Fringe benefit", health insurance, a retirement benefit received under
11 a **defined benefit** pension plan **as defined in section 414(j) of the Internal**
12 **Revenue Code or contributions under a defined contribution plan as**
13 **defined in section 414(i) of the Internal Revenue Code**, a paid vacation
14 day, a paid holiday, sick leave, and any other analogous employee benefit that is
15 provided by an employer;

16 (4) "Normal weekly hours of work", as to any individual, the lesser of forty
17 hours or the average obtained by dividing the total number of hours worked per

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

18 week in the preceding twelve-week period by the number twelve;
19 (5) "Participating employee", an employee who works a reduced number
20 of hours under a shared work plan;
21 (6) "Participating employer", an employer who has a shared work plan in
22 effect;
23 (7) "Shared work benefit", an unemployment compensation benefit that
24 is payable to an individual in an affected unit because the individual works
25 reduced hours under an approved shared work plan;
26 (8) "Shared work plan", a program for reducing unemployment under
27 which employees who are members of an affected unit share the work remaining
28 after a reduction in their normal weekly hours of work;
29 (9) "Shared work unemployment compensation program", a program
30 designed to reduce unemployment and stabilize the work force by allowing certain
31 employees to collect unemployment compensation benefits if the employees share
32 the work remaining after a reduction in the total number of hours of work and a
33 corresponding reduction in wages.
34 3. An employer who wishes to participate in the shared work
35 unemployment compensation program established under this section shall submit
36 a written shared work plan in a form acceptable to the division for approval. As
37 a condition for approval by the division, a participating employer shall agree to
38 furnish the division with reports relating to the operation of the shared work plan
39 as requested by the division. The employer shall monitor and evaluate the
40 operation of the established shared work plan as requested by the division and
41 shall report the findings to the division.
42 4. The division may approve a shared work plan if:
43 (1) The employer has filed all reports required to be filed under this
44 chapter for all past and current periods and has paid all contributions due for all
45 past and current periods;
46 (2) The shared work plan applies to and identifies a specified affected
47 unit;
48 (3) The employees in the affected unit are identified by name and Social
49 Security number;
50 (4) The shared work plan reduces the normal weekly hours of work for an
51 employee in the affected unit by not less than twenty percent and not more than
52 forty percent;
53 (5) The shared work plan applies to at least ten percent of the employees

in the affected unit;

(6) The **[**shared work plan**]** **employer must certify that, if [**describes the manner in which**]** the participating employer **[**treats the**]** **provides** fringe benefits**, as defined in this section, to any [**of each**]** employee in the affected unit**, such benefits will continue to be provided to employees participating in the shared work unemployment compensation program under the same terms and conditions as though the normal weekly hours of work had not been reduced or to the same extent as other employees not participating in the shared work unemployment compensation program**; **[**and**]**

(7) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of **[**temporary**]** layoffs that would affect at least ten percent of the employees in the affected unit and that would result in an equivalent reduction in work hours**;**

(8) The shared work plan includes an estimate of the number of employees who would be laid off if the employer does not participate in the shared work unemployment compensation program;

(9) The shared work plan describes the manner in which employees in the affected unit will be notified of the employer's participation in the shared work unemployment compensation program. If the employer will not provide advance notice to the employees in the affected unit, the shared work plan must contain a statement explaining why it is not feasible to provide advance notice;

(10) The employer certifies that participation in the shared work plan and its implementation is consistent with the employer's obligation under applicable federal and state laws; and

(11) Any other provision that the United States Secretary of Labor determines to be appropriate for the purpose of a shared work unemployment compensation program.

5. If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

6. No shared work plan which will subsidize seasonal employers during the off-season **[**or subsidize employers, at least fifty percent of the employees of which have normal weekly hours of work equaling thirty-two hours or less,**]** shall be approved by the division. No shared work plan benefits will be initiated when

90 the reduced hours coincide with holiday earnings already committed to be paid
91 by the employer. Shared work plan benefits may not be denied in any week
92 containing a holiday for which holiday earnings are committed to be paid by the
93 employer unless the shared work benefits to be paid are for the same hours in the
94 same day as the holiday earnings.

95 7. The division shall approve or deny a shared work plan not later than
96 the thirtieth day after the day on which the shared work plan is received by the
97 division. The division shall approve or deny a plan in writing. If the division
98 denies a plan, the division shall notify the employer of the reasons for the
99 denial. Approval or denial of a plan by the division shall be final and such
100 determination shall be subject to review in the manner otherwise provided by
101 law. If approval of a plan is denied by the division, the employer may submit a
102 new plan to the division for consideration no sooner than forty-five calendar days
103 following the date on which the division disapproved the employer's previously
104 submitted plan.

105 8. The division may revoke approval of a shared work plan and terminate
106 the plan if it determines that the shared work plan is not being executed
107 according to the terms and intent of the shared work unemployment
108 compensation program, or if it is determined by the division that the approval of
109 the shared work plan was based, in whole or in part, upon information contained
110 in the plan which was either false or substantially misleading.

111 9. Each shared work plan approved by the division shall become effective
112 on the first day of the week in which it is approved by the division or on a later
113 date as specified in the shared work plan. Each shared work plan approved by
114 the division shall expire on the last day of the twelfth full calendar month after
115 the effective date of such shared work plan.

116 10. An employer may modify a shared work plan created under this
117 section to meet changed conditions if the modification conforms to the basic
118 provisions of the shared work plan as originally approved by the division. The
119 employer shall report the changes made to the plan in writing to the division at
120 least seven days before implementing such changes. The division shall reevaluate
121 the shared work plan and may approve the modified shared work plan if it meets
122 the requirements for approval under subsection 4 of this section. The approval
123 of a modified shared work plan shall not, under any circumstances, affect the
124 expiration date originally set for the shared work plan. If modifications cause the
125 shared work plan to fail to meet the requirements for approval, the division shall

deny approval of the modifications as provided in subsection 7 of this section.

11. Notwithstanding any other provisions of this chapter, an individual is unemployed for the purposes of this section in any week in which the individual, as an employee in an affected unit, works less than his normal weekly hours of work in accordance with an approved shared work plan in effect for that week.

12. An individual who is otherwise entitled to receive regular unemployment insurance benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the division finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) Notwithstanding the provisions of subdivision (2) of subsection 1 of section 288.040, the individual is able to work**[**,**] and** available for **[**work and works all available**] his or her normal** hours **of work** with the participating employer;

(3) The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than forty percent, with a corresponding reduction in wages; and

(4) The individual has served a waiting week as defined in section 288.030.

13. A waiting week served under the provisions of subdivision (3) of subsection 1 of section 288.040 shall serve to meet the requirements of subdivision (4) of subsection 12 of this section and a waiting week served under the provisions of subdivision (4) of subsection 12 of this section shall serve to meet the requirements of section 288.040. Notwithstanding any other provisions of this chapter, an individual who files a new initial claim during the pendency of the twelve-month period in which a shared work plan is in effect shall serve a waiting week whether or not the individual has served a waiting week under this subsection.

14. The division shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter that relates to availability for work, active search for work, **[**or**]** refusal to apply for or accept work with an employer other than the participating employer under the plan**, or training that is approved by the director, as provided in section 288.055, such as employer-sponsored training or**

162 **training funded under the Workforce Investment Act of 1998**.

163 15. The division shall pay an individual who is eligible for shared work
164 benefits under this section a weekly shared work benefit amount equal to the
165 individual's regular weekly benefit amount for a period of total unemployment
166 less any deductible amounts under this chapter except wages received from any
167 employer, multiplied by the full percentage of reduction in the individual's hours
168 as set forth in the employer's shared work plan. If the shared work benefit
169 amount calculated under this subsection is not a multiple of one dollar, the
170 division shall round the amount so calculated to the next lowest multiple of one
171 dollar. **[**An individual shall be ineligible for shared work benefits for any week
172 in which the individual performs paid work for the participating employer in
173 excess of the reduced hours established under the shared work plan.**]**

174 16. An individual shall not be entitled to receive shared work benefits and
175 regular unemployment compensation benefits in an aggregate amount which
176 exceeds the maximum total amount of benefits payable to that individual in a
177 benefit year as provided under section **[**288.038**] 288.060**. Notwithstanding any
178 other provisions of this chapter, an individual shall not be eligible to receive
179 shared work benefits for more than fifty-two calendar weeks during the
180 twelve-month period of the shared work plan. No week shall be counted as a
181 week of unemployment for the purposes of this subsection unless it occurs within
182 the twelve-month period of the shared work plan.

183 17. Notwithstanding any other provision of this chapter, all benefits paid
184 under a shared work plan which are chargeable to the participating employer or
185 any other base period employer **[**of a participating employee shall be charged to
186 the account of the participating employer under the plan**] shall be charged to**
187 **employers in the same manner as regular unemployment benefits are**
188 **chargeable under this chapter**.

189 18. An individual who has received all of the shared work benefits and
190 regular unemployment compensation benefits available in a benefit year is an
191 exhaustee under section 288.062 and is entitled to receive extended benefits
192 under section 288.062 if the individual is otherwise eligible under that section.

193 **19. If the United States Secretary of Labor determines that any**
194 **provision of this section is not in compliance with federal law, the non-**
195 **compliant provision shall not affect the validity of the remaining**
196 **provisions of this section.**

Section B. Because immediate action is necessary to ensure the state is

compliant with federal mandates the repeal and reenactment of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section A of this act shall be in full force and effect on August 1, 2014, or upon its passage and approval, whichever occurs later.

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