

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 461, Page 1, in the Title, Line 2, by  
2 deleting the word "taxes"; and

3  
4 Further amend said bill and page, Section A, Line 2, by inserting immediately after said line the  
5 following:

6  
7 "285.400. 1. The provisions of sections 285.400 to 285.415 shall be known and may be  
8 cited as the "Missouri Family Leave Act".

9 2. As used in sections 285.400 to 285.415, the following terms shall mean:

10 (1) "Care", includes, but is not limited to, physical care, emotional support, visitation,  
11 assistance in treatment, transportation, arranging for a change in care, assistance with essential daily  
12 living matters, and personal attendant services;

13 (2) "Care provider", the family member who is providing the required care for a serious  
14 health condition or the family member who is bonding with the new child;

15 (3) "Care recipient", the family member who is receiving care for a serious health condition  
16 or the new child with whom the care provider is bonding;

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

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

22 (6) "Family care leave", any of the following:

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

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

26 (7) "Family member", a child, parent, grandparent, grandchild, sibling, spouse, domestic or  
27 civil union partner, or household member;

28 (8) "Grandchild", a child of the employee's child;

29 (9) "Grandparent", a parent of the employee's parent;

30 (10) "Health care provider", an individual duly licensed or certified in the state acting within  
31 the scope of his or her license or certification who is a dentist, podiatrist, or an advanced practice  
32 registered nurse;

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

35 (12) "Parent-in-law", the parent of a spouse or domestic partner;

36 (13) "Serious health condition", an illness, injury, impairment, or physical or mental

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1 condition that involves inpatient care in a hospital, hospice, or residential health care facility, or  
 2 continuing medical treatment or continuing supervision by a health care provider. The term shall  
 3 include medical attention, services, or counseling for victims of stalking, domestic violence, abuse,  
 4 or trafficking;

5 (14) “Sibling”, a person related to another person by blood, adoption, or affinity through a  
 6 common legal or biological parent;

7 (15) “Spouse”, a partner to a lawful marriage;

8 (16) “Twelve-month period”, with respect to any individual, the three hundred sixty-five  
 9 consecutive days that begin with the first day the individual first establishes a valid claim for  
 10 Missouri family leave benefits;

11 (17) “Valid claim”, any claim for Missouri family leave benefits made in accordance with  
 12 the provisions of sections 285.400 to 285.415 and any rules and regulations adopted thereunder if the  
 13 individual claiming benefits is unable to work due to caring for a seriously ill family member or  
 14 bonding with a minor child during the first year after the birth or placement of the child in  
 15 connection with foster care or adoption;

16 (18) “Weekly benefit amount”, the amount provided in section 288.038.

17 285.405. 1. There is hereby established the “Missouri Family Leave Program” to provide up  
 18 to six weeks of wage replacement benefits to employees who take time off work to care for a family  
 19 member with a serious health condition or to bond with a minor child within one year of the birth or  
 20 placement of the child in connection with foster care or adoption. The department shall administer  
 21 and implement the Missouri family leave program and the provisions of sections 285.400 to 285.415,  
 22 and shall pay Missouri family leave benefits as specified in such sections.

23 2. An individual shall be eligible to receive Missouri family leave program benefits equal to  
 24 one-seventh of his or her weekly benefit amount for each full day during which he or she is unable to  
 25 work due to caring for a family member with a serious health condition or bonding with a minor  
 26 child within one year of the birth or placement of the child in connection with foster care or  
 27 adoption. Individuals shall be subject to a seven-day waiting period during each family care leave  
 28 period with respect to which waiting period no Missouri family leave benefits shall be payable.

29 3. The maximum amount payable to an individual during any family care leave period for  
 30 Missouri family leave benefits shall be six times his or her weekly benefit amount, but in no case  
 31 shall the total amount of benefits payable be more than the total wages paid to the individual during  
 32 his or her base period. If the benefit is not a multiple of one dollar, it shall be computed to the next  
 33 higher multiple of one dollar.

34 4. No more than six weeks of Missouri family leave benefits shall be paid within any  
 35 twelve-month period.

36 5. An individual shall file a claim for Missouri family leave benefits not later than the  
 37 forty-first consecutive day following the first compensable day with respect to which the claim is  
 38 made for benefits, which time shall be extended by the department upon a showing of good cause. If  
 39 a first claim is not complete, the claim form shall be returned to the claimant for completion, and it  
 40 shall be completed and returned not later than the tenth consecutive day after the date it was mailed  
 41 by the department to the claimant, except that such time shall be extended by the department upon a  
 42 showing of good cause.

43 6. No individual shall be eligible for Missouri family leave program benefits with respect to  
 44 any day:

45 (1) That he or she has received unemployment compensation benefits under chapter 288 or  
 46 under an unemployment compensation act of any other state or of the federal government;

47 (2) Of unemployment and disability for which he or she has received, or is entitled to receive  
 48 any other benefits under the workers’ compensation laws of this state; or

1           (3) That he or she is entitled to receive state disability insurance benefits or under a disability  
2 insurance act of any other state or of the federal government.

3           7. An individual who is entitled to leave under the Family and Medical Leave Act (FMLA)  
4 under 29 U.S.C. Section 2601 et. seq. shall take Missouri family leave concurrent with leave taken  
5 under the FMLA.

6           8. The first payment of Missouri family leave benefits shall be made to an individual within  
7 two weeks after the completed claim is received or the family leave began, whichever is later, and  
8 subsequent payments shall be made biweekly thereafter.

9           285.410. 1. A claimant shall establish medical eligibility for each uninterrupted family care  
10 leave period by filing a first claim for benefits supported by the certificate of a treating physician or  
11 health care provider that establishes the serious health condition of the family member that warrants  
12 the care of the employee. For subsequent periods of uninterrupted leave after the period covered by  
13 the initial certificate or any preceding continued claim, a claimant shall file a continued claim for  
14 those benefits supported by the certificate of a treating physician or health care provider.

15           2. An employee shall be required to file a certificate to establish eligibility when taking leave  
16 to care for a family member with a serious health condition. The certificate shall be developed by  
17 the department. In order to establish medical eligibility of the serious health condition of the family  
18 member that warrants the care of the employee, the information shall be within the physician's or  
19 health care provider's knowledge and shall be based on a physical examination and documented  
20 medical history of the family member and shall contain all of the following:

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

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

24           (3) The probable duration of the condition;

25           (4) An estimate of the amount of time that the physician or health care provider believes the  
26 employee needs to care for the family member; and

27           (5) A statement that the serious health condition warrants the participation of the employee  
28 to provide care for his or her family member.

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

33           4. The first and any continuing claim of an individual who obtains care and treatment outside  
34 the state shall be supported by a certificate of a treating physician or health care provider duly  
35 licensed or certified by the state or foreign country in which the claimant is receiving the care and  
36 treatment.

37           5. Nothing in this section shall be construed to preclude the department from requesting  
38 additional medical evidence to supplement the first or any continued claim. Any cost incurred for  
39 procuring additional medical evidence shall be paid by the employer. The department may require  
40 that the additional evidence include any or all of the following:

41           (1) Identification of diagnoses;

42           (2) Identification of symptoms;

43           (3) A statement setting forth the facts of the family member's serious health condition,  
44 which shall be completed by any of the following individuals:

45           (a) The physician or health care provider treating the family member;

46           (b) The registrar, authorized medical officer, or other duly authorized official of the hospital  
47 or health care facility treating the family member; or

48           (c) An examining physician or other representative of the department.

1        285.412. 1. Except as provided in subsection 4 of this section, a person may file a notice of  
 2 appeal from any determination or redetermination made by the department by mail or in person  
 3 within thirty days after the date on which a copy of the department's decision was received by the  
 4 person. Upon receipt of the notice of appeal, the department shall request the assignment of an  
 5 administrative law judge in accordance with chapters 536 and 621 to conduct a hearing and issue a  
 6 proposed decision and order. The hearing shall be conducted in accordance with chapters 536 and  
 7 621.

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

11        3. If upon judicial review the final decision of the department is reversed or modified, the  
 12 court in its discretion may award the prevailing party, other than the department, reasonable  
 13 attorneys' fees and costs. Attorneys' fees and costs owed by the department, if any, shall be payable  
 14 from employer contributions collected under chapter 288.

15        4. A determination of amount of benefits potentially payable under sections 285.400 to  
 16 285.415 shall not serve as a basis for appeal under this section. However, the determination shall be  
 17 subject to request by the individual on family leave for redetermination by the department at any  
 18 time within one year from the date of delivery or mailing of such determination, or any  
 19 redetermination thereof. A redetermination shall be furnished to the individual in writing and  
 20 provide the basis for appeal under this section.

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

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

29        7. A redetermination may be made at any time:

30        (1) To conform to a final court decision applicable to either an initial determination or a  
 31 determination of denial or allowance of benefits;

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

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

34  
 35 Written notice of any such redetermination shall be promptly given by mail or delivered to such  
 36 interested parties as were notified of the initial determination or determination of denial or allowance  
 37 of benefits and any new interested party or parties who, under such rule as the department may  
 38 adopt, would be an interested party.

39        285.413. 1. It shall be unlawful for any person to discharge or in any other manner  
 40 discriminate against an individual because the individual has applied for, indicated an intent to apply  
 41 for, or received Missouri family leave benefits.

42        2. Any person who violates the provisions of subsection 1 of this section shall be liable to  
 43 any individual employed by such person who is affected by the violation for such equitable relief as  
 44 may be appropriate including employment, reinstatement, or promotion and for damages equal to the  
 45 sum of:

46        (1) The amount of:

47        (a) Any wages, salary, employment benefits, or other compensation denied or lost to such  
 48 individual by reason of the violation; or

1           (b) In a case in which wages, salary, employment benefits, or other compensation have not  
2 been denied or lost to the individual, any actual monetary losses sustained by the individual as a  
3 direct result of the violation, such as the cost of providing care, up to a sum equal to sixty calendar  
4 days of wages or salary for the individual;

5           (2) The interest on the amount described in subdivision (1) of this subsection calculated at  
6 the prevailing rate; and

7           (3) An additional amount as liquidated damages equal to the sum of the amount described in  
8 subdivision (1) of this subsection and the interest described in subdivision (2) of this subsection,  
9 except that if a person who has violated subsection 1 of this section proves to the satisfaction of the  
10 court that the act or omission which violated subsection 1 of this section was in good faith and that  
11 the person had reasonable grounds for believing that the act or omission was not a violation of  
12 subsection 1 of this section, such court may, in the discretion of the court, reduce the amount of the  
13 liability to the amount and interest determined under subdivisions (1) and (2) of this subsection,  
14 respectively.

15           3. An action to recover the damages or equitable relief prescribed in subsection 2 of this  
16 section may be maintained against any person in any court of competent jurisdiction by any  
17 individual for and on behalf of the individual or the individual and other individuals similarly  
18 situated.

19           4. The court in any action under this section shall, in addition to any judgment awarded to  
20 the plaintiff, allow reasonable attorneys' fees, expert witness fees, and other costs of the action to be  
21 paid by the defendant.

22           5. The right provided by subsection 3 of this section to bring an action by or on behalf of any  
23 individual shall terminate:

24           (1) On the filing of a complaint by the department in an action under subsection 8 of this  
25 section in which restraint is sought of any further delay in the payment of the amount described in  
26 subdivision (1) of subsection 2 of this section to such individual by the person responsible under  
27 subsection 2 of this section for the payment; or

28           (2) On the filing of a complaint by the department in an action under subsection 6 of this  
29 section in which a recovery is sought of the damages described in subdivision (1) of subsection 2 of  
30 this section owing to an individual by a person liable under subsection 2 of this section, unless the  
31 action is dismissed without prejudice on motion of the department.

32           6. The department may bring an action in any court of competent jurisdiction to recover the  
33 damages described in subsection 2 of this section. Any sums recovered by the department shall be  
34 held in a special deposit account and shall be paid, on order of the department, directly to each  
35 individual affected.

36           7. An action may be brought under this section not later than three years after the date of the  
37 last event constituting the alleged violation for which the action is brought. An action brought by the  
38 department under this section shall be considered to be commenced on the date when the complaint  
39 is filed.

40           8. The circuit courts shall have jurisdiction, for cause shown, in an action brought by the  
41 department to restrain violations of subsection 1 of this section including the restraint of any  
42 withholding of payment of wages, salary, employment benefits, or other compensation, plus interest,  
43 found by the court to be due to an individual, or to award such other equitable relief as may be  
44 appropriate including employment, reinstatement, and promotion.

45           285.414. 1. The department shall develop and implement an outreach program to ensure that  
46 individuals who may be eligible to receive Missouri family leave benefits under sections 285.400 to  
47 285.415 are made aware of such benefits. Outreach information shall easily explain eligibility  
48 requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice and

1 medical certification requirements, reinstatement and nondiscrimination rights, confidentiality, and  
2 the relationship between employment protection, leave from employment, wage replacement  
3 benefits, and other laws, collective bargaining agreements, and employer policies.

4 2. Not later than three years after the effective date of sections 285.400 to 285.415, the state  
5 auditor shall submit to the general assembly a report on the Missouri family leave benefits paid for  
6 any month during the one-year period beginning on the effective date of sections 285.400 to  
7 285.415. The report shall include the following:

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

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

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

16 285.415. In order to provide funding to implement the provisions of sections 285.400 to  
17 285.410, each employer that is liable for contributions under chapter 288 shall have an additional  
18 surcharge of eight-hundredths of one percent added to the employer's contribution rate calculated  
19 under section 288.120."; and

20  
21 Further amend said bill by amending the title, enacting clause, and intersectional references  
22 accordingly.