

SECOND REGULAR SESSION

# SENATE BILL NO. 1049

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS SCHUPP, WALSH AND HOLSMAN.

Read 1st time February 11, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To amend chapter 285, RSMo, by adding thereto eight new sections relating to leave from employment.

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

Section A. Chapter 285, RSMo, is amended by adding thereto eight new  
2 sections, to be known as sections 285.400, 285.405, 285.410, 285.412, 285.413,  
3 285.414, 285.415, and 285.416, to read as follows:

**285.400. 1. The provisions of sections 285.400 to 285.416 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 285.416, the following terms shall  
5 mean:**

**6 (1) "Average daily pay", the total wages earned by an employee  
7 in the most recent month divided by the number of days worked by the  
8 employee in such month;**

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

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

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

**19 (5) "Child", a biological, adopted, or foster son or daughter, a  
20 stepson or stepdaughter, a legal ward, a son or daughter of a domestic**

21 or civil union partner, or the person to whom the employee stands in  
22 loco parentis who is under nineteen years of age or nineteen years of  
23 age or older but incapable of self-care because of mental or physical  
24 impairment;

25 (6) "Department", the department of labor and industrial  
26 relations;

27 (7) "Employee", any person performing work or service of any  
28 kind or character for hire within the state of Missouri;

29 (8) "Employer", any person acting directly or indirectly in the  
30 interest of an employer in relation to an employee;

31 (9) "Family member", a child, parent, grandparent, grandchild,  
32 sibling, spouse, domestic or civil union partner, or household member;

33 (10) "Family or medical leave", any of the following:

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

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

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

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

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

41 (13) "Health care provider", any physician, hospital, health  
42 maintenance organization, ambulatory surgical center, long-term care  
43 facility including those licensed under chapter 198, dentist, registered  
44 or licensed practical nurse, optometrist, podiatrist, pharmacist,  
45 chiropractor, professional physical therapist, psychologist,  
46 physician-in-training, and any other person or entity that provides  
47 health care services under the authority of a license or certificate of  
48 this state or any other state or foreign country;

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

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

53 (16) "Serious health condition", an illness, injury, impairment, or  
54 physical or mental condition that involves inpatient care in a hospital,  
55 hospice, or residential health care facility, or continuing medical  
56 treatment or continuing supervision by a health care provider. The  
57 term shall include medical attention, services, or counseling for victims

58 of stalking, domestic violence, abuse, or sexual assault, as such terms  
59 are defined in section 455.010, or victims of trafficking for the purpose  
60 of sexual exploitation as described in section 566.209;

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

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

64 (19) "Valid claim", any claim for Missouri family leave benefits  
65 made in accordance with the provisions of sections 285.400 to 285.416  
66 and any rules and regulations adopted thereunder if the individual  
67 claiming benefits is unable to work due to caring for a family member  
68 with a serious health condition, or bonding with a minor child during  
69 the first year after the birth or placement of the child in connection  
70 with foster care or adoption, or due to his or her own serious health  
71 condition.

285.405. 1. There is hereby established the "Missouri Earned  
2 Family and Medical Leave Program" to provide up to thirty days of  
3 wage replacement benefits to employees who take time off work for  
4 family or medical leave. The department shall administer and  
5 implement the program and the provisions of sections 285.400 to  
6 285.416, and shall pay Missouri family or medical leave benefits as  
7 specified in such sections.

8 2. An employee shall be eligible to receive Missouri earned  
9 family or medical leave program benefits equal to one hundred percent  
10 of his or her average daily pay for each full day during which he or she  
11 has taken family or medical leave.

12 3. The maximum amount of Missouri earned family or medical  
13 leave program benefits payable to an employee during any family or  
14 medical care leave period shall be thirty times his or her average daily  
15 pay. If the benefit is not a multiple of one dollar, it shall be computed  
16 to the next higher multiple of one dollar.

17 4. No more than thirty days of Missouri earned family and  
18 medical leave benefits shall be paid to an employee within any calendar  
19 year.

20 5. 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 mailed by the department  
28 to the employee, except that such time shall be extended by the  
29 department upon a showing of good cause.

30 6. 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 has received unemployment compensation  
33 benefits under chapter 288 or under an unemployment compensation  
34 act of any other state or of the federal government;

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

37 (3) That he or she is entitled to receive state disability insurance  
38 benefits under the laws of this state or under a disability insurance act  
39 of any other state or of the federal government.

40 7. No employee shall be eligible for Missouri earned family and  
41 medical leave benefits until such employee has been employed by his  
42 or her present employer for one year.

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

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

285.410. 1. An employee shall establish medical eligibility for  
2 each uninterrupted family or medical care leave period by filing a first  
3 claim for benefits supported by the certificate of a treating physician  
4 or health care provider that establishes the serious health condition of  
5 the 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. The certificates required under subsection 1 of this section  
12 shall be developed by the department. In order to establish medical  
13 eligibility of the serious health condition of the family member that  
14 warrants the care of the employee, or to establish medical eligibility of  
15 the serious health condition of the employee, the information on the  
16 certificate shall be within the physician's or health care provider's  
17 knowledge and shall be based on a physical examination and  
18 documented medical history of the family member or employee. The  
19 certificate shall contain all of the following:

20       (1) A diagnosis and diagnostic code prescribed in the  
21 International Classification of Diseases or, if no diagnosis has yet been  
22 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  
26 health care provider believes the employee needs to care for the family  
27 member or himself or herself; and

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

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

36       4. Any claim of an individual who obtains care and treatment  
37 outside the state shall be supported by a certificate of a treating  
38 physician or health care provider duly licensed or certified by the state  
39 or foreign country in which the claimant is receiving care and  
40 treatment.

41       5. Nothing in this section shall be construed to preclude the  
42 department from requesting additional medical evidence to supplement  
43 any claim. Any cost incurred for procuring additional medical evidence  
44 shall be paid by the employee. The department may require that the  
45 additional evidence include any or all of the following:

46       (1) Identification of diagnoses;

47           **(2) Identification of symptoms;**

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

51           **(a) The physician or health care provider treating the employee**  
52 **or family member of the employee;**

53           **(b) The registrar, authorized medical officer, or other duly**  
54 **authorized official of the hospital or health care facility treating the**  
55 **employee or family member of the employee; or**

56           **(c) An examining physician or other representative of the**  
57 **department;**

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

**285.412. 1. Except as provided in subsection 4 of this section, an**  
2 **employee may file a notice of appeal from any determination or**  
3 **redetermination of eligibility for benefits made by the department by**  
4 **mail or in person within thirty days after the date on which a copy of**  
5 **the department's decision was received by the employee. Upon receipt**  
6 **of the notice of appeal, the department shall request the assignment of**  
7 **an administrative law judge in accordance with chapter 536 to conduct**  
8 **a hearing and issue a proposed decision and order. The hearing shall**  
9 **be 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. In the event that judicial review is granted, and the final**  
15 **decision of the department is reversed or modified, the court in its**  
16 **discretion may award the prevailing party, other than the department,**  
17 **reasonable attorneys' fees and costs. Attorneys' fees and costs owed by**  
18 **the department, if any, shall be payable from employer contributions**  
19 **collected under chapter 288.**

20           **4. A determination of the amount of benefits potentially payable**  
21 **under sections 285.400 to 285.416 shall not serve as a basis for appeal**  
22 **under this section. However, the determination shall be subject to**  
23 **request by the employee on family or medical leave for redetermination**

24 by the department at any time within one year from the date of  
25 delivery or mailing of such determination, or any redetermination  
26 thereof. A redetermination shall be furnished to the individual in  
27 writing and provide the basis for appeal under this section.

28       5. A denial of benefits shall become final in the absence of timely  
29 appeal therefrom. The department may redetermine a denial of  
30 benefits at any time within one year from delivery or mailing of such  
31 denial to correct an error in identity, omission of fact, or  
32 misapplication of law with respect to the facts.

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

38       7. A redetermination of benefits may be made at any time for any  
39 of the following reasons:

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

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

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

47 Written notice of any such redetermination shall be promptly given by  
48 mail or delivered to such interested parties as were notified of the  
49 initial determination of denial or allowance of benefits and any new  
50 interested party or parties who, under such rule as the department may  
51 adopt, would be an interested party.

285.413. 1. It shall be unlawful for any person to discharge or in  
2 any other manner discriminate against an employee because the  
3 employee has applied for, indicated an intent to apply for, or received  
4 Missouri earned family and medical leave benefits.

5       2. (1) Any person who violates the provisions of subsection 1 of  
6 this section shall be liable to any employee of such person who is  
7 affected by the violation for such equitable relief as may be appropriate  
8 including employment, reinstatement, or promotion and for damages  
9 equal to the sum of:

10           **(a) The amount of:**

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

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

19           **(b) The interest on the amount described in paragraph (a) of this**  
20 **subdivision calculated at the prevailing rate; and**

21           **(c) An additional amount as liquidated damages equal to the sum**  
22 **of the amount described in paragraph (a) of this subdivision and the**  
23 **interest described in paragraph (b) of this subdivision, except that if a**  
24 **person who has violated subsection 1 of this section proves to the**  
25 **satisfaction of the court that the act or omission was in good faith and**  
26 **that the person had reasonable grounds for believing that the act or**  
27 **omission was not a violation, such court may reduce the amount of**  
28 **damages.**

29           **(2) The court may additionally require reasonable attorney's**  
30 **fees, expert witness fees, and other courts costs to be paid by a**  
31 **defendant.**

32           **3. An action to recover the relief prescribed in subsection 2 of**  
33 **this section may be maintained against any person in any court of**  
34 **competent jurisdiction by:**

35           **(1) The employee affected; or**

36           **(2) By any employee on behalf of an employee affected.**

37           **4. The department may bring an action seeking relief on behalf**  
38 **of an employee under this section. The right to bring an action**  
39 **provided under subsection 3 of this section shall terminate upon the**  
40 **filing of a complaint by the department in an action in which**  
41 **injunctive, equitable, or compensatory relief is sought, as provided**  
42 **under subsection 2 of this section. If any damages are recovered in**  
43 **such action, such damages shall be held in a special deposit account**  
44 **and paid directly to each employee affected.**

45           **5. An action may be brought under this section not later than**  
46 **three years after the date of the alleged violation for which the action**



47 is brought. An action brought under this section shall be considered to  
48 be commenced on the date when the complaint is filed.

285.414. 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 285.416 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 285.416, 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.

285.415. In order to provide funding to implement the provisions  
2 of sections 285.400 to 285.410, employees shall contribute one quarter  
3 of one percent of their average daily pay to the program beginning  
4 January 1, 2017. Employers may also contribute funds to the program  
5 beginning January 1, 2017 in order to cover all or a percentage of the  
6 costs associated with the Missouri earned family and medical leave  
7 program. Employers shall not be required to contribute to the

8 program. Employees of employers that contribute one hundred percent  
9 of funds to the program necessary to cover all of such employer's  
10 employees shall not be required to contribute to the program. In the  
11 event that an employer contributes a fraction of the funds required to  
12 cover the program costs for their employees, such employees shall only  
13 be required to contribute the remaining fraction of the program costs.  
14 No employee shall receive benefits from the program until January 1,  
15 2018.

285.416. 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 285.415 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 August 28, 2016, shall  
10 be invalid and void.

Bill ✓

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