

FIRST REGULAR SESSION

# SENATE BILL NO. 481

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

2256S.02I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal section 288.380, RSMo, and to enact in lieu thereof one new section relating to the recovery of unemployment benefits, with existing penalty provisions and an emergency clause.

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

Section A. Section 288.380, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.380, to read as follows:

288.380. 1. Any agreement by a worker to waive, release, or commute such worker's rights to benefits or any other rights pursuant to this chapter or pursuant to an employment security law of any other state or of the federal government shall be void. Any agreement by a worker to pay all or any portion of any contributions required shall be void. No employer shall directly or indirectly make any deduction from wages to finance the employer's contributions required from him or her, or accept any waiver of any right pursuant to this chapter by any individual in his or her employ.

2. No employing unit or any agent of an employing unit or any other person shall make a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a material fact to prevent or reduce the payment of benefits to any individual, nor to avoid becoming or remaining an employer, nor to avoid or reduce any

18 contribution or other payment required from any employing  
19 unit, nor shall willfully fail or refuse to make any  
20 contributions or payments nor to furnish any required  
21 reports nor to produce or permit the inspection or copying  
22 of required records. Each such requirement shall apply  
23 regardless of whether it is a requirement of this chapter,  
24 of an employment security law of any other state or of the  
25 federal government.

26         3. No person shall make a false statement or  
27 representation knowing it to be false or knowingly fail to  
28 disclose a material fact, to obtain or increase any benefit  
29 or other payment pursuant to this chapter, or under an  
30 employment security law of any other state or of the federal  
31 government either for himself or herself or for any other  
32 person.

33         4. No person shall without just cause fail or refuse  
34 to attend and testify or to answer any lawful inquiry or to  
35 produce books, papers, correspondence, memoranda, and other  
36 records, if it is in such person's power so to do in  
37 obedience to a subpoena of the director, the commission, an  
38 appeals tribunal, or any duly authorized representative of  
39 any one of them.

40         5. No individual claiming benefits shall be charged  
41 fees of any kind in any proceeding pursuant to this chapter  
42 by the division, or by any court or any officer thereof.  
43 Any individual claiming benefits in any proceeding before  
44 the division or a court may be represented by counsel or  
45 other duly authorized agent; but no such counsel or agents  
46 shall either charge or receive for such services more than  
47 an amount approved by the division.

48         6. No employee of the division or any person who has  
49 obtained any list of applicants for work or of claimants for

50 or recipients of benefits pursuant to this chapter shall use  
51 or permit the use of such lists for any political purpose.

52 7. Any person who shall willfully violate any  
53 provision of this chapter, or of an employment security law  
54 of any other state or of the federal government or any rule  
55 or regulation, the observance of which is required under the  
56 terms of any one of such laws, shall upon conviction be  
57 deemed guilty of a misdemeanor and shall be punished by a  
58 fine of not less than fifty dollars nor more than one  
59 thousand dollars, or by imprisonment in the county jail for  
60 not more than six months, or by both such fine and  
61 imprisonment, and each such violation or each day such  
62 violation continues shall be deemed to be a separate offense.

63 8. In case of contumacy by, or refusal to obey a  
64 subpoena issued to, any person, any court of this state  
65 within the jurisdiction of which the inquiry is carried on,  
66 or within the jurisdiction of which the person guilty of  
67 contumacy or refusal to obey is found or resides or  
68 transacts business, upon application by the director, the  
69 commission, an appeals tribunal, or any duly authorized  
70 representative of any one of them shall have jurisdiction to  
71 issue to such person an order requiring such person to  
72 appear before the director, the commission, an appeals  
73 tribunal or any duly authorized representative of any one of  
74 them, there to produce evidence if so ordered or there to  
75 give testimony touching the matter under investigation or in  
76 question; and any failure to obey such order of the court  
77 may be punished by the court as a contempt thereof.

78 9. (1) Any individual or employer who receives or  
79 denies unemployment benefits by intentionally  
80 misrepresenting, misstating, or failing to disclose any  
81 material fact has committed fraud. After the discovery of

82 facts indicating fraud, a deputy shall make a written  
83 determination that the individual obtained or denied  
84 unemployment benefits by fraud and that the individual must  
85 promptly repay the unemployment benefits to the fund. In  
86 addition, the deputy shall assess a penalty equal to twenty-  
87 five percent of the amount fraudulently obtained or denied.  
88 If division records indicate that the individual or employer  
89 had a prior established overpayment or record of denial due  
90 to fraud, the deputy shall, on the present overpayment or  
91 determination, assess a penalty equal to one hundred percent  
92 of the amount fraudulently obtained.

93 (2) Unless the individual or employer within thirty  
94 calendar days after notice of such determination of  
95 overpayment by fraud is either delivered in person or mailed  
96 to the last known address of such individual or employer  
97 files an appeal from such determination, it shall be final.  
98 Proceedings on the appeal shall be conducted in accordance  
99 with section 288.190.

100 (3) If the individual or employer fails to repay the  
101 unemployment benefits and penalty, assessed as a result of  
102 the deputy's determination that the individual or employer  
103 obtained or denied unemployment benefits by fraud, such sum  
104 shall be collectible in the manner provided in subsection 14  
105 of this section for the recovery of overpaid unemployment  
106 compensation benefits. If the individual or employer fails  
107 to repay the unemployment benefits that the individual or  
108 employer denied or obtained by fraud, the division may  
109 offset from any future unemployment benefits otherwise  
110 payable the amount of the overpayment, or may take such  
111 steps as are necessary to effect payment from the individual  
112 or employer. Future benefits may not be used to offset the  
113 penalty due. Money received in repayment of fraudulently

114 obtained or denied unemployment benefits and penalties shall  
115 first be applied to the unemployment benefits overpaid, then  
116 to the penalty amount due. Regarding and for payments made  
117 toward the penalty, an amount equal to fifteen percent of  
118 the total amount of benefits fraudulently obtained shall be  
119 immediately deposited into the state's unemployment  
120 compensation fund upon receipt and the remaining penalty  
121 amount shall be credited to the special employment security  
122 fund.

123 (4) If fraud or evasion on the part of any employer is  
124 discovered by the division, the employer will be subject to  
125 the fraud provisions of subsection 4 of section 288.160.

126 (5) The provisions of this subsection shall become  
127 effective July 1, 2005.

128 10. An individual who willfully fails to disclose  
129 amounts earned during any week with respect to which  
130 benefits are claimed by him or her, willfully fails to  
131 disclose or has falsified as to any fact which would have  
132 disqualified him or her or rendered him or her ineligible  
133 for benefits during such week, or willfully fails to  
134 disclose a material fact or makes a false statement or  
135 representation in order to obtain or increase any benefit  
136 pursuant to this chapter shall forfeit all of his or her  
137 benefit rights, and all of his or her wage credits accrued  
138 prior to the date of such failure to disclose or  
139 falsification shall be cancelled, and any benefits which  
140 might otherwise have become payable to him or her subsequent  
141 to such date based upon such wage credits shall be  
142 forfeited; except that, the division may, upon good cause  
143 shown, modify such reduction of benefits and cancellation of  
144 wage credits. It shall be presumed that such failure or  
145 falsification was willful in any case in which an individual

146 signs and certifies a claim for benefits and fails to  
147 disclose or falsifies as to any fact relative to such claim.

148       11. (1) Any assignment, pledge, or encumbrance of any  
149 rights to benefits which are or may become due or payable  
150 pursuant to this chapter shall be void; and such rights to  
151 benefits shall be exempt from levy, execution, attachment,  
152 or any other remedy whatsoever provided for the collection  
153 of debt; and benefits received by any individual, so long as  
154 they are not mingled with other funds of the recipient,  
155 shall be exempt from any remedy whatsoever for the  
156 collection of all debts except debts incurred for  
157 necessities furnished to such individual or the individual's  
158 spouse or dependents during the time such individual was  
159 unemployed. Any waiver of any exemption provided for in  
160 this subsection shall be void; except that this section  
161 shall not apply to:

162       (a) Support obligations, as defined pursuant to  
163 paragraph (g) of subdivision (2) of this subsection, which  
164 are being enforced by a state or local support enforcement  
165 agency against any individual claiming unemployment  
166 compensation pursuant to this chapter; or

167       (b) Uncollected overissuances (as defined in Section  
168 13(c) (1) of the Food Stamp Act of 1977) of food stamp  
169 coupons.

170       (2) (a) An individual filing a new claim for  
171 unemployment compensation shall, at the time of filing such  
172 claim, disclose whether or not the individual owes support  
173 obligations, as defined pursuant to paragraph (g) of this  
174 subdivision or owes uncollected overissuances of food stamp  
175 coupons (as defined in Section 13(c) (1) of the Food Stamp  
176 Act of 1977). If any such individual discloses that he or  
177 she owes support obligations or uncollected overissuances of

178 food stamp coupons, and is determined to be eligible for  
179 unemployment compensation, the division shall notify the  
180 state or local support enforcement agency enforcing the  
181 support obligation or the state food stamp agency to which  
182 the uncollected food stamp overissuance is owed that such  
183 individual has been determined to be eligible for  
184 unemployment compensation;

185 (b) The division shall deduct and withhold from any  
186 unemployment compensation payable to an individual who owes  
187 support obligations as defined pursuant to paragraph (g) of  
188 this subdivision or who owes uncollected food stamp  
189 overissuances:

190 a. The amount specified by the individual to the  
191 division to be deducted and withheld pursuant to this  
192 paragraph if neither subparagraph b. nor subparagraph c. of  
193 this paragraph is applicable; or

194 b. The amount, if any, determined pursuant to an  
195 agreement submitted to the division pursuant to Section  
196 454(20)(B)(i) of the Social Security Act by the state or  
197 local support enforcement agency, unless subparagraph c. of  
198 this paragraph is applicable; or the amount (if any)  
199 determined pursuant to an agreement submitted to the state  
200 food stamp agency pursuant to Section 13(c)(3)(a) of the  
201 Food Stamp Act of 1977; or

202 c. Any amount otherwise required to be so deducted and  
203 withheld from such unemployment compensation pursuant to  
204 properly served legal process, as that term is defined in  
205 Section 459(i) of the Social Security Act; or any amount  
206 otherwise required to be deducted and withheld from the  
207 unemployment compensation pursuant to Section 13(c)(3)(b) of  
208 the Food Stamp Act of 1977;

209 (c) Any amount deducted and withheld pursuant to  
210 paragraph (b) of this subdivision shall be paid by the  
211 division to the appropriate state or local support  
212 enforcement agency or state food stamp agency;

213 (d) Any amount deducted and withheld pursuant to  
214 paragraph (b) of this subdivision shall, for all purposes,  
215 be treated as if it were paid to the individual as  
216 unemployment compensation and paid by such individual to the  
217 state or local support enforcement agency in satisfaction of  
218 the individual's support obligations or to the state food  
219 stamp agency to which the uncollected overissuance is owed  
220 as repayment of the individual's uncollected overissuance;

221 (e) For purposes of paragraphs (a), (b), (c), and (d)  
222 of this subdivision, the term "unemployment compensation"  
223 means any compensation payable pursuant to this chapter,  
224 including amounts payable by the division pursuant to an  
225 agreement pursuant to any federal law providing for  
226 compensation, assistance, or allowances with respect to  
227 unemployment;

228 (f) Deductions will be made pursuant to this section  
229 only if appropriate arrangements have been made for  
230 reimbursement by the state or local support enforcement  
231 agency, or the state food stamp agency, for the  
232 administrative costs incurred by the division pursuant to  
233 this section which are attributable to support obligations  
234 being enforced by the state or local support enforcement  
235 agency or which are attributable to uncollected  
236 overissuances of food stamp coupons;

237 (g) The term "support obligations" is defined for  
238 purposes of this subsection as including only obligations  
239 which are being enforced pursuant to a plan described in  
240 Section 454 of the Social Security Act which has been



241 approved by the Secretary of Health and Human Services  
242 pursuant to Part D of Title IV of the Social Security Act;

243 (h) The term "state or local support enforcement  
244 agency", as used in this subsection, means any agency of a  
245 state, or political subdivision thereof, operating pursuant  
246 to a plan described in paragraph (g) of this subdivision;

247 (i) The term "state food stamp agency" as used in this  
248 subsection means any agency of a state, or political  
249 subdivision thereof, operating pursuant to a plan described  
250 in the Food Stamp Act of 1977;

251 (j) The director may prescribe the procedures to be  
252 followed and the form and contents of any documents required  
253 in carrying out the provisions of this subsection;

254 (k) The division shall comply with the following  
255 priority when deducting and withholding amounts from any  
256 unemployment compensation payable to an individual:

257 a. Before withholding any amount for child support  
258 obligations or uncollected overissuances of food stamp  
259 coupons, the division shall first deduct and withhold from  
260 any unemployment compensation payable to an individual the  
261 amount, as determined by the division, owed pursuant to  
262 subsection 12 or 13 of this section;

263 b. If, after deductions are made pursuant to  
264 subparagraph a. of this paragraph, an individual has  
265 remaining unemployment compensation amounts due and owing,  
266 and the individual owes support obligations or uncollected  
267 overissuances of food stamp coupons, the division shall  
268 first deduct and withhold any remaining unemployment  
269 compensation amounts for application to child support  
270 obligations owed by the individual;

271 c. If, after deductions are made pursuant to  
272 subparagraphs a. and b. of this paragraph, an individual has

273 remaining unemployment compensation amounts due and owing,  
274 and the individual owes uncollected overissuances of food  
275 stamp coupons, the division shall deduct and withhold any  
276 remaining unemployment compensation amounts for application  
277 to uncollected overissuances of food stamp coupons owed by  
278 the individual.

279         12. Any person who, by reason of the nondisclosure or  
280 misrepresentation by such person or by another of a material  
281 fact, has received any sum as benefits pursuant to this  
282 chapter while any conditions for the receipt of benefits  
283 imposed by this chapter were not fulfilled in such person's  
284 case, or while he or she was disqualified from receiving  
285 benefits, shall, in the discretion of the division, either  
286 be liable to have such sums deducted from any future  
287 benefits payable to such person pursuant to this chapter or  
288 shall be liable to repay to the division for the  
289 unemployment compensation fund a sum equal to the amounts so  
290 received by him or her. The division may recover such sums  
291 in accordance with the provisions of subsection 14 of this  
292 section.

293         13. Any person who, by reason of any error or omission  
294 or because of a lack of knowledge of material fact on the  
295 part of the division, has received any sum of benefits  
296 pursuant to this chapter while any conditions for the  
297 receipt of benefits imposed by this chapter were not  
298 fulfilled in such person's case, or while such person was  
299 disqualified from receiving benefits, shall after an  
300 opportunity for a fair hearing pursuant to subsection 2 of  
301 section 288.190, in the discretion of the division, either  
302 be liable to have such sums deducted from any further  
303 benefits payable to such person pursuant to this chapter, or  
304 shall be liable to repay to the division for the

305 unemployment compensation fund a sum equal to the amounts so  
306 received by him or her. The division may recover such sums  
307 in accordance with the provisions of subsection 14 of this  
308 section. However, the division may elect not to process  
309 such possible overpayments where the amount of same is not  
310 over twenty percent of the maximum state weekly benefit  
311 amount in effect at the time the error or omission was  
312 discovered.

313 14. Recovering overpaid unemployment compensation  
314 benefits shall be pursued by the division against any person  
315 receiving such overpaid unemployment compensation benefits  
316 through billing, setoffs against state and federal tax  
317 refunds to the extent permitted by federal law, intercepts  
318 of lottery winnings under section 313.321, and collection  
319 efforts as provided for in sections 288.160, 288.170, and  
320 288.175.

321 15. **The division shall not recover or attempt to**  
322 **recover any sum of benefits received pursuant to this**  
323 **chapter that were received by any person by reason of error**  
324 **or omission or because of lack of knowledge of material fact**  
325 **on the part of the division if such benefits were paid to**  
326 **such person during the existence of a state of emergency**  
327 **declared by the governor due to COVID-19.**

328 16. Any person who has received any sum as benefits  
329 under the laws of another state, or under any unemployment  
330 benefit program of the United States administered by another  
331 state while any conditions for the receipt of benefits  
332 imposed by the law of such other state were not fulfilled in  
333 his or her case, shall after an opportunity for a fair  
334 hearing pursuant to subsection 2 of section 288.190 have  
335 such sums deducted from any further benefits payable to such  
336 person pursuant to this chapter, but only if there exists

337 between this state and such other state a reciprocal  
338 agreement under which such entity agrees to recover benefit  
339 overpayments, in like fashion, on behalf of this state.

Section B. Because of the need to ensure that  
2 Missourians who erroneously received unemployment benefits  
3 due to no fault of their own are not forced to pay back such  
4 benefits, section A of this act is deemed necessary for the  
5 immediate preservation of the public health, welfare, peace,  
6 and safety, and is hereby declared to be an emergency act  
7 within the meaning of the constitution, and section A of  
8 this act shall be in full force and effect upon its passage  
9 and approval.

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