

FIRST REGULAR SESSION

SENATE BILL NO. 482

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK.

2292S.011

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Section A. Section 288.380, RSMo, is repealed and one new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

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

2. No employing unit or any agent of an employing unit
13 or any other person shall make a false statement or
14 representation knowing it to be false, nor shall knowingly
15 fail to disclose a material fact to prevent or reduce the
16 payment of benefits to any individual, nor to avoid becoming
17 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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