

SECOND REGULAR SESSION

SENATE BILL NO. 702

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4037S.011

AN ACT

To repeal sections 288.380 and 288.381, RSMo, and to enact in lieu thereof two new sections relating to unemployment compensation benefits, with existing penalty provisions.

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

Section A. Sections 288.380 and 288.381, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 288.380 and 288.381, to read as follows: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 contribution or other payment required from any employing unit, nor shall willfully fail or refuse to make any contributions or payments nor to furnish any required reports nor to produce or permit the inspection or copying of required records. Each such requirement shall apply regardless of whether it is a requirement of this chapter, of an employment

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

18 security law of any other state or of the federal government.

19 3. No person shall make a false statement or representation knowing it
20 to be false or knowingly fail to disclose a material fact, to obtain or increase any
21 benefit or other payment pursuant to this chapter, or under an employment
22 security law of any other state or of the federal government either for himself or
23 herself or for any other person.

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

29 5. No individual claiming benefits shall be charged fees of any kind in any
30 proceeding pursuant to this chapter by the division, or by any court or any officer
31 thereof. Any individual claiming benefits in any proceeding before the division
32 or a court may be represented by counsel or other duly authorized agent; but no
33 such counsel or agents shall either charge or receive for such services more than
34 an amount approved by the division.

35 6. No employee of the division or any person who has obtained any list of
36 applicants for work or of claimants for or recipients of benefits pursuant to this
37 chapter shall use or permit the use of such lists for any political purpose.

38 7. Any person who shall willfully violate any provision of this chapter, or
39 of an employment security law of any other state or of the federal government or
40 any rule or regulation, the observance of which is required under the terms of any
41 one of such laws, shall upon conviction be deemed guilty of a misdemeanor and
42 shall be punished by a fine of not less than fifty dollars nor more than one
43 thousand dollars, or by imprisonment in the county jail for not more than six
44 months, or by both such fine and imprisonment, and each such violation or each
45 day such violation continues shall be deemed to be a separate offense.

46 8. In case of contumacy by, or refusal to obey a subpoena issued to, any
47 person, any court of this state within the jurisdiction of which the inquiry is
48 carried on, or within the jurisdiction of which the person guilty of contumacy or
49 refusal to obey is found or resides or transacts business, upon application by the
50 director, the commission, an appeals tribunal, or any duly authorized
51 representative of any one of them shall have jurisdiction to issue to such person
52 an order requiring such person to appear before the director, the commission, an
53 appeals tribunal or any duly authorized representative of any one of them, there

54 to produce evidence if so ordered or there to give testimony touching the matter
55 under investigation or in question; and any failure to obey such order of the court
56 may be punished by the court as a contempt thereof.

57 9. (1) Any individual or employer who receives or denies unemployment
58 benefits by intentionally misrepresenting, misstating, or failing to disclose any
59 material fact has committed fraud. After the discovery of facts indicating fraud,
60 a deputy shall make a written determination that the individual obtained or
61 denied unemployment benefits by fraud and that the individual must promptly
62 repay the unemployment benefits to the fund. In addition, the deputy shall
63 assess a penalty equal to twenty-five percent of the amount fraudulently obtained
64 or denied. If division records indicate that the individual or employer had a prior
65 established overpayment or record of denial due to fraud, the deputy shall, on the
66 present overpayment or determination, assess a penalty equal to one hundred
67 percent of the amount fraudulently obtained.

68 (2) Unless the individual or employer within thirty calendar days after
69 notice of such determination of overpayment by fraud is either delivered in person
70 or mailed to the last known address of such individual or employer files an appeal
71 from such determination, it shall be final. Proceedings on the appeal shall be
72 conducted in accordance with section 288.190.

73 (3) If the individual or employer fails to repay the unemployment benefits
74 and penalty, assessed as a result of the deputy's determination that the
75 individual or employer obtained or denied unemployment benefits by fraud, such
76 sum shall be collectible in the manner provided in [sections 288.160 and 288.170
77 for the collection of past due contributions] **subsection 14 of this section for**
78 **the recovery of overpaid unemployment compensation benefits.** If the
79 individual or employer fails to repay the unemployment benefits that the
80 individual or employer denied or obtained by fraud, the division may offset from
81 any future unemployment benefits otherwise payable the amount of the
82 overpayment, or may take such steps as are necessary to effect payment from the
83 individual or employer. Future benefits may not be used to offset the penalty
84 due. Money received in repayment of fraudulently obtained or denied
85 unemployment benefits and penalties shall first be applied to the unemployment
86 benefits overpaid, then to the penalty amount due. [Payments made toward the
87 penalty amount due] **Regarding payments made toward the penalty, an**
88 **amount equal to fifteen percent of the total amount of benefits**
89 **fraudulently obtained shall be immediately deposited into the state's**

90 **unemployment compensation fund upon receipt and the remaining**
91 **penalty amount** shall be credited to the special employment security fund.

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

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

96 10. An individual who willfully fails to disclose amounts earned during
97 any week with respect to which benefits are claimed by him or her, willfully fails
98 to disclose or has falsified as to any fact which would have disqualified him or her
99 or rendered him or her ineligible for benefits during such week, or willfully fails
100 to disclose a material fact or makes a false statement or representation in order
101 to obtain or increase any benefit pursuant to this chapter shall forfeit all of his
102 or her benefit rights, and all of his or her wage credits accrued prior to the date
103 of such failure to disclose or falsification shall be cancelled, and any benefits
104 which might otherwise have become payable to him or her subsequent to such
105 date based upon such wage credits shall be forfeited; except that, the division
106 may, upon good cause shown, modify such reduction of benefits and cancellation
107 of wage credits. It shall be presumed that such failure or falsification was willful
108 in any case in which an individual signs and certifies a claim for benefits and
109 fails to disclose or falsifies as to any fact relative to such claim.

110 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits
111 which are or may become due or payable pursuant to this chapter shall be void;
112 and such rights to benefits shall be exempt from levy, execution, attachment, or
113 any other remedy whatsoever provided for the collection of debt; and benefits
114 received by any individual, so long as they are not mingled with other funds of
115 the recipient, shall be exempt from any remedy whatsoever for the collection of
116 all debts except debts incurred for necessities furnished to such individual or the
117 individual's spouse or dependents during the time such individual was
118 unemployed. Any waiver of any exemption provided for in this subsection shall
119 be void; except that this section shall not apply to:

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

124 (b) Uncollected overissuances (as defined in Section 13(c)(1) of the Food
125 Stamp Act of 1977) of food stamp coupons;

126 (2) (a) An individual filing a new claim for unemployment compensation
127 shall, at the time of filing such claim, disclose whether or not the individual owes
128 support obligations, as defined pursuant to paragraph (g) of this subdivision or
129 owes uncollected overissuances of food stamp coupons (as defined in Section
130 13(c)(1) of the Food Stamp Act of 1977). If any such individual discloses that he
131 or she owes support obligations or uncollected overissuances of food stamp
132 coupons, and is determined to be eligible for unemployment compensation, the
133 division shall notify the state or local support enforcement agency enforcing the
134 support obligation or the state food stamp agency to which the uncollected food
135 stamp overissuance is owed that such individual has been determined to be
136 eligible for unemployment compensation;

137 (b) The division shall deduct and withhold from any unemployment
138 compensation payable to an individual who owes support obligations as defined
139 pursuant to paragraph (g) of this subdivision or who owes uncollected food stamp
140 overissuances:

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

144 b. The amount, if any, determined pursuant to an agreement submitted
145 to the division pursuant to Section 454(20)(B)(i) of the Social Security Act by the
146 state or local support enforcement agency, unless subparagraph c. of this
147 paragraph is applicable; or the amount (if any) determined pursuant to an
148 agreement submitted to the state food stamp agency pursuant to Section
149 13(c)(3)(a) of the Food Stamp Act of 1977; or

150 c. Any amount otherwise required to be so deducted and withheld from
151 such unemployment compensation pursuant to properly served legal process, as
152 that term is defined in Section 459(i) of the Social Security Act; or any amount
153 otherwise required to be deducted and withheld from the unemployment
154 compensation pursuant to Section 13(c)(3)(b) of the Food Stamp Act of 1977;

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

158 (d) Any amount deducted and withheld pursuant to paragraph (b) of this
159 subdivision shall, for all purposes, be treated as if it were paid to the individual
160 as unemployment compensation and paid by such individual to the state or local
161 support enforcement agency in satisfaction of the individual's support obligations

162 or to the state food stamp agency to which the uncollected overissuance is owed
163 as repayment of the individual's uncollected overissuance;

164 (e) For purposes of paragraphs (a), (b), (c), and (d) of this subdivision, the
165 term "unemployment compensation" means any compensation payable pursuant
166 to this chapter, including amounts payable by the division pursuant to an
167 agreement pursuant to any federal law providing for compensation, assistance,
168 or allowances with respect to unemployment;

169 (f) Deductions will be made pursuant to this section only if appropriate
170 arrangements have been made for reimbursement by the state or local support
171 enforcement agency, or the state food stamp agency, for the administrative costs
172 incurred by the division pursuant to this section which are attributable to support
173 obligations being enforced by the state or local support enforcement agency or
174 which are attributable to uncollected overissuances of food stamp coupons;

175 (g) The term "support obligations" is defined for purposes of this
176 subsection as including only obligations which are being enforced pursuant to a
177 plan described in Section 454 of the Social Security Act which has been approved
178 by the Secretary of Health and Human Services pursuant to Part D of Title IV of
179 the Social Security Act;

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

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

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

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

192 a. Before withholding any amount for child support obligations or
193 uncollected overissuances of food stamp coupons, the division shall first deduct
194 and withhold from any unemployment compensation payable to an individual the
195 amount, as determined by the division, owed pursuant to subsection 12 or 13 of
196 this section;

197 b. If, after deductions are made pursuant to subparagraph a. of this

198 paragraph, an individual has remaining unemployment compensation amounts
199 due and owing, and the individual owes support obligations or uncollected
200 overissuances of food stamp coupons, the division shall first deduct and withhold
201 any remaining unemployment compensation amounts for application to child
202 support obligations owed by the individual;

203 c. If, after deductions are made pursuant to subparagraphs a. and b. of
204 this paragraph, an individual has remaining unemployment compensation
205 amounts due and owing, and the individual owes uncollected overissuances of
206 food stamp coupons, the division shall deduct and withhold any remaining
207 unemployment compensation amounts for application to uncollected overissuances
208 of food stamp coupons owed by the individual.

209 12. Any person who, by reason of the nondisclosure or misrepresentation
210 by such person or by another of a material fact, has received any sum as benefits
211 pursuant to this chapter while any conditions for the receipt of benefits imposed
212 by this chapter were not fulfilled in such person's case, or while he or she was
213 disqualified from receiving benefits, shall, in the discretion of the division, either
214 be liable to have such sums deducted from any future benefits payable to such
215 person pursuant to this chapter or shall be liable to repay to the division for the
216 unemployment compensation fund a sum equal to the amounts so received by him
217 or her. **The division may recover such sums in accordance with the**
218 **provisions of subsection 14 of this section.**

219 13. Any person who, by reason of any error or omission or because of a
220 lack of knowledge of material fact on the part of the division, has received any
221 sum of benefits pursuant to this chapter while any conditions for the receipt of
222 benefits imposed by this chapter were not fulfilled in such person's case, or while
223 such person was disqualified from receiving benefits, shall after an opportunity
224 for a fair hearing pursuant to subsection 2 of section 288.190, **in the discretion**
225 **of the division, either be liable to** have such sums deducted from any further
226 benefits payable to such person pursuant to this chapter, **[provided that] or shall**
227 **be liable to repay to the division for the unemployment compensation**
228 **fund a sum equal to the amounts so received by him or her. The**
229 **division may recover such sums in accordance with the provisions of**
230 **subsection 14 of this section. However,** the division may elect not to process
231 such possible overpayments where the amount of same is not over twenty percent
232 of the maximum state weekly benefit amount in effect at the time the error or
233 omission was discovered.

234 14. Recovering overpaid unemployment compensation benefits shall be
235 pursued by the division against any person receiving such overpaid
236 unemployment compensation benefits through billing, setoffs against state and
237 federal tax refunds to the extent permitted by federal law, intercepts of lottery
238 winnings under section 313.321, and collection efforts as provided for in sections
239 288.160, 288.170, and 288.175.

240 15. Any person who has received any sum as benefits under the laws of
241 another state, or under any unemployment benefit program of the United States
242 administered by another state while any conditions for the receipt of benefits
243 imposed by the law of such other state were not fulfilled in his or her case, shall
244 after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190
245 have such sums deducted from any further benefits payable to such person
246 pursuant to this chapter, but only if there exists between this state and such
247 other state a reciprocal agreement under which such entity agrees to recover
248 benefit overpayments, in like fashion, on behalf of this state.

288.381. 1. The provisions of subsection [6] 8 of section 288.070
2 notwithstanding, benefits paid to a claimant pursuant to subsection [5] 7 of
3 section 288.070 to which the claimant was not entitled based on a subsequent
4 determination, redetermination or decision which has become final, shall be
5 collectible by the division as provided in subsections 12 and 13 of section 288.380.

6 2. Notwithstanding any other provision of law to the contrary, when a
7 claimant who has been separated from his employment receives benefits under
8 this chapter and subsequently receives a back pay award pursuant to action by
9 a governmental agency, court of competent jurisdiction or as a result of
10 arbitration proceedings, for a period of time during which no services were
11 performed, the division shall establish an overpayment equal to the lesser of the
12 amount of the back pay award or the benefits paid to the claimant which were
13 attributable to the period covered by the back pay award. After the claimant has
14 been provided an opportunity for a fair hearing under the provision of section
15 288.190, the employer shall withhold from the employee's back pay award the
16 amount of benefits so received and shall pay such amount to the division and
17 separately designate such amount.

18 3. For the purposes of subsection 2 of this section, the division shall
19 provide the employer with the amount of benefits paid to the claimant.

20 4. Any individual, company, association, corporation, partnership, bureau,
21 agency or the agent or employee of the foregoing who interferes with, obstructs,

22 or otherwise causes an employer to fail to comply with the provisions of
23 subsection 2 of this section shall be liable for damages in the amount of three
24 times the amount owed by the employer to the division. The division shall
25 proceed to collect such damages under the provisions of sections 288.160 and
26 288.170.

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