

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1010

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BROWN (57).

2232L.01P

D. ADAM CRUMBLISS, Chief Clerk

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 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Section A. Sections 288.380 and 288.381, RSMo, are repealed and two new sections
2 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
2 rights to benefits or any other rights pursuant to this chapter or pursuant to an employment
3 security law of any other state or of the federal government shall be void. Any agreement by a
4 worker to pay all or any portion of any contributions required shall be void. No employer shall
5 directly or indirectly make any deduction from wages to finance the employer's contributions
6 required from him or her, or accept any waiver of any right pursuant to this chapter by any
7 individual in his or her employ.

8 2. No employing unit or any agent of an employing unit or any other person shall make
9 a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a
10 material fact to prevent or reduce the payment of benefits to any individual, nor to avoid
11 becoming or remaining an employer, nor to avoid or reduce any contribution or other payment
12 required from any employing unit, nor shall willfully fail or refuse to make any contributions or
13 payments nor to furnish any required reports nor to produce or permit the inspection or copying
14 of required records. Each such requirement shall apply regardless of whether it is a requirement
15 of this chapter, of an employment security law of any other state or of the federal government.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

39 8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court
40 of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction
41 of which the person guilty of contumacy or refusal to obey is found or resides or transacts
42 business, upon application by the director, the commission, an appeals tribunal, or any duly
43 authorized representative of any one of them shall have jurisdiction to issue to such person an
44 order requiring such person to appear before the director, the commission, an appeals tribunal
45 or any duly authorized representative of any one of them, there to produce evidence if so ordered
46 or there to give testimony touching the matter under investigation or in question; and any failure
47 to obey such order of the court may be punished by the court as a contempt thereof.

48 9. (1) Any individual or employer who receives or denies unemployment benefits by
49 intentionally misrepresenting, misstating, or failing to disclose any material fact has committed
50 fraud. After the discovery of facts indicating fraud, a deputy shall make a written determination
51 that the individual obtained or denied unemployment benefits by fraud and that the individual

52 must promptly repay the unemployment benefits to the fund. In addition, the deputy shall assess
53 a penalty equal to twenty-five percent of the amount fraudulently obtained or denied. If division
54 records indicate that the individual or employer had a prior established overpayment or record
55 of denial due to fraud, the deputy shall, on the present overpayment or determination, assess a
56 penalty equal to one hundred percent of the amount fraudulently obtained.

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

61 (3) If the individual or employer fails to repay the unemployment benefits and penalty,
62 assessed as a result of the deputy's determination that the individual or employer obtained or
63 denied unemployment benefits by fraud, such sum shall be collectible in the manner provided
64 in [sections 288.160 and 288.170 for the collection of past due contributions] **subsection 14 of**
65 **this section for the recovery of overpaid unemployment compensation benefits.** If the
66 individual or employer fails to repay the unemployment benefits that the individual or employer
67 denied or obtained by fraud, the division may offset from any future unemployment benefits
68 otherwise payable the amount of the overpayment, or may take such steps as are necessary to
69 effect payment from the individual or employer. Future benefits may not be used to offset the
70 penalty due. Money received in repayment of fraudulently obtained or denied unemployment
71 benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the
72 penalty amount due. [Payments made toward the penalty amount due] **Regarding payments**
73 **made toward the penalty, an amount equal to fifteen percent of the total amount of benefits**
74 **fraudulently obtained shall be immediately deposited into the state's unemployment**
75 **compensation fund upon receipt and the remaining penalty amount** shall be credited to the
76 special employment security fund.

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

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

80 10. An individual who willfully fails to disclose amounts earned during any week with
81 respect to which benefits are claimed by him or her, willfully fails to disclose or has falsified as
82 to any fact which would have disqualified him or her or rendered him or her ineligible for
83 benefits during such week, or willfully fails to disclose a material fact or makes a false statement
84 or representation in order to obtain or increase any benefit pursuant to this chapter shall forfeit
85 all of his or her benefit rights, and all of his or her wage credits accrued prior to the date of such
86 failure to disclose or falsification shall be cancelled, and any benefits which might otherwise
87 have become payable to him or her subsequent to such date based upon such wage credits shall

88 be forfeited; except that, the division may, upon good cause shown, modify such reduction of
89 benefits and cancellation of wage credits. It shall be presumed that such failure or falsification
90 was willful in any case in which an individual signs and certifies a claim for benefits and fails
91 to disclose or falsifies as to any fact relative to such claim.

92 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or
93 may become due or payable pursuant to this chapter shall be void; and such rights to benefits
94 shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for
95 the collection of debt; and benefits received by any individual, so long as they are not mingled
96 with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection
97 of all debts except debts incurred for necessities furnished to such individual or the individual's
98 spouse or dependents during the time such individual was unemployed. Any waiver of any
99 exemption provided for in this subsection shall be void; except that this section shall not apply
100 to:

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

104 (b) Uncollected overissuances (as defined in Section 13(c)(1) of the Food Stamp Act of
105 1977) of food stamp coupons;

106 (2) (a) An individual filing a new claim for unemployment compensation shall, at the
107 time of filing such claim, disclose whether or not the individual owes support obligations, as
108 defined pursuant to paragraph (g) of this subdivision or owes uncollected overissuances of food
109 stamp coupons (as defined in Section 13(c)(1) of the Food Stamp Act of 1977). If any such
110 individual discloses that he or she owes support obligations or uncollected overissuances of food
111 stamp coupons, and is determined to be eligible for unemployment compensation, the division
112 shall notify the state or local support enforcement agency enforcing the support obligation or the
113 state food stamp agency to which the uncollected food stamp overissuance is owed that such
114 individual has been determined to be eligible for unemployment compensation;

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

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

121 b. The amount, if any, determined pursuant to an agreement submitted to the division
122 pursuant to Section 454(20)(B)(i) of the Social Security Act by the state or local support
123 enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if

124 any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to
125 Section 13(c)(3)(a) of the Food Stamp Act of 1977; or

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

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

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

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

143 (f) Deductions will be made pursuant to this section only if appropriate arrangements
144 have been made for reimbursement by the state or local support enforcement agency, or the state
145 food stamp agency, for the administrative costs incurred by the division pursuant to this section
146 which are attributable to support obligations being enforced by the state or local support
147 enforcement agency or which are attributable to uncollected overissuances of food stamp
148 coupons;

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

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

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

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

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

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

167 b. If, after deductions are made pursuant to subparagraph a. of this paragraph, an
168 individual has remaining unemployment compensation amounts due and owing, and the
169 individual owes support obligations or uncollected overissuances of food stamp coupons, the
170 division shall first deduct and withhold any remaining unemployment compensation amounts for
171 application to child support obligations owed by the individual;

172 c. If, after deductions are made pursuant to subparagraphs a. and b. of this paragraph, an
173 individual has remaining unemployment compensation amounts due and owing, and the
174 individual owes uncollected overissuances of food stamp coupons, the division shall deduct and
175 withhold any remaining unemployment compensation amounts for application to uncollected
176 overissuances of food stamp coupons owed by the individual.

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

186 13. Any person who, by reason of any error or omission or because of a lack of
187 knowledge of material fact on the part of the division, has received any sum of benefits pursuant
188 to this chapter while any conditions for the receipt of benefits imposed by this chapter were not
189 fulfilled in such person's case, or while such person was disqualified from receiving benefits,
190 shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190, **in the**
191 **discretion of the division, either be liable to** have such sums deducted from any further
192 benefits payable to such person pursuant to this chapter, [provided that] **or shall be liable to**
193 **repay to the division for the unemployment compensation fund a sum equal to the amounts**
194 **so received by him or her. The division may recover such sums in accordance with the**

195 **provisions of subsection 14 of this section. However,** the division may elect not to process
196 such possible overpayments where the amount of same is not over twenty percent of the
197 maximum state weekly benefit amount in effect at the time the error or omission was discovered.

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

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

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

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

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

18 4. Any individual, company, association, corporation, partnership, bureau, agency or the
19 agent or employee of the foregoing who interferes with, obstructs, or otherwise causes an
20 employer to fail to comply with the provisions of subsection 2 of this section shall be liable for

21 damages in the amount of three times the amount owed by the employer to the division. The
22 division shall proceed to collect such damages under the provisions of sections 288.160 and
23 288.170.

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