

SECOND REGULAR SESSION

# HOUSE BILL NO. 1530

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BROWN (57).

4784H.011

D. ADAM CRUMBLISS, Chief Clerk

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## 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.

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*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Section A. Sections 288.380 and 288.381, RSMo, are repealed and two new sections  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.

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

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.

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] **For payments made**  
73 **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 be liable to repay**  
193 **to the division for the unemployment compensation fund a sum equal to the amounts so**  
194 **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

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22 division shall proceed to collect such damages under the provisions of sections 288.160 and  
23 288.170.

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