

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 611

97TH GENERAL ASSEMBLY

1384H.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 285.300, 288.100, and 288.380, RSMo, and to enact in lieu thereof three new sections relating to unemployment compensation, with a penalty provision.

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

Section A. Sections 285.300, 288.100, and 288.380, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 285.300, 288.100, and 288.380, to read as follows:

285.300. 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart. For purposes of this section, the date the employer hires the employee shall be the earlier of the date the employee signs the W-4 form or its equivalent, or the first date the employee reports to work, or performs labor or services. Such forms shall be forwarded by the department of revenue to the division of child support enforcement on a weekly basis and the information shall be entered into the database, to be known as the "State Directory of New Hires". The information reported shall be provided to the National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or contractors of the division as required or allowed by federal statutes or regulations. The division of employment security shall cross-check Missouri unemployment compensation recipients against any federal new hire database or any other database containing Missouri or other states'

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.

17 wage information which is maintained by the federal government on a weekly basis. The
18 division of employment security shall cross-check unemployment compensation applicants and
19 recipients with Social Security Administration data maintained by the federal government at least
20 weekly. Effective January 1, 2007, the division of employment security shall cross-check at least
21 monthly unemployment compensation applicants and recipients with department of revenue
22 drivers license databases.

23 2. Any employer that has employees who are employed in two or more states and
24 transmits reports magnetically or electronically may comply with subsection 1 of this section by:

25 (1) Designating one of the states in which the employer has employees as the designated
26 state that such employer shall transmit the reports; and

27 (2) Notifying the secretary of Health and Human Services of such designation.

28 **3. For the purposes of this section, “newly hired employee” means an employee**
29 **who:**

30 **(1) Has not previously been employed by the employer; or**

31 **(2) Was previously employed by the employer but has been separated from such**
32 **prior employment for at least sixty consecutive days.**

288.100. 1. (1) The division shall maintain a separate account for each employer which
2 is paying contributions, and shall credit each employer's account with all contributions which
3 each employer has paid. A separate account shall be maintained for each employer making
4 payments in lieu of contributions to which shall be credited all such payments made. The
5 account shall also show payments due as provided in section 288.090. The division may close
6 and cancel such separate account after a period of four consecutive calendar years during which
7 such employer has had no employment in this state subject to contributions. Nothing in this law
8 shall be construed to grant any employer or individuals in the employer's service prior claims or
9 rights to the amounts paid by the employer into the fund either on the employer's own behalf or
10 on behalf of such individuals. Except as provided in subdivision (4) of this subsection, regular
11 benefits and that portion of extended benefits not reimbursed by the federal government paid to
12 an eligible individual shall be charged against the accounts of the individual's base period
13 employers who are paying contributions subject to the provisions of subdivision (4) of subsection
14 3 of section 288.090. With respect to initial claims filed after December 31, 1984, for benefits
15 paid to an individual based on wages paid by one or more employers in the base period of the
16 claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid
17 by a ratio obtained by dividing the base period wages from such employer by the total wages
18 appearing in the base period. Except as provided in this subdivision, the maximum amount of
19 extended benefits paid to an individual and charged against the account of any employer shall
20 not exceed one-half of the product obtained by multiplying the benefits paid by a ratio obtained

21 by dividing the base period wages from such employer by the total wages appearing in the base
22 period. The provisions of this subdivision notwithstanding, with respect to weeks of
23 unemployment beginning after December 31, 1978, the maximum amount of extended benefits
24 paid to an individual and charged against the account of an employer which is an employer
25 pursuant to subdivision (3) of subsection 1 of section 288.032 and which is paying contributions
26 pursuant to subsections 1 and 2 of section 288.090 shall not exceed the calculated entitlement
27 for the extended benefit claim based upon the wages appearing within the base period of the
28 extended benefit claim.

29 (2) Beginning as of June 30, 1951, and as of June thirtieth of each year thereafter, any
30 unassigned surplus in the unemployment compensation fund which is five hundred thousand
31 dollars or more in excess of five-tenths of one percent of the total taxable wages paid by all
32 employers for the preceding calendar year as shown on the division's records on such June
33 thirtieth shall be credited on a pro rata basis to all employer accounts having a credit balance in
34 the same ratio that the balance in each such account bears to the total of the credit balances
35 subject to use for rate calculation purposes for the following year in all such accounts on the
36 same date. As used in this subdivision, the term "unassigned surplus" means the amount by
37 which the total cash balance in the unemployment compensation fund exceeds a sum equal to
38 the total of all employer credit account balances. The amount thus prorated to each separate
39 employer's account shall for tax rating purposes be considered the same as contributions paid by
40 the employer and credited to the employer's account for the period preceding the calculation date
41 except that no such amount can be credited against any contributions due or that may thereafter
42 become due from such employer.

43 (3) At the conclusion of each calendar quarter the division shall, within thirty days,
44 notify each employer by mail of the benefits paid to each claimant by week as determined by the
45 division which have been charged to such employer's account subsequent to the last notice.

46 (4) (a) No benefits based on wages paid for services performed prior to the date of any
47 act for which a claimant is disqualified pursuant to section 288.050 shall be chargeable to any
48 employer directly involved in such disqualifying act.

49 (b) In the event the deputy has in due course determined pursuant to paragraph (a) of
50 subdivision (1) of subsection 1 of section 288.050 that a claimant quit his or her work with an
51 employer for the purpose of accepting a more remunerative job with another employer which the
52 claimant did accept and earn some wages therein, no benefits based on wages paid prior to the
53 date of the quit shall be chargeable to the employer the claimant quit.

54 (c) In the event the deputy has in due course determined pursuant to paragraph (b) of
55 subdivision (1) of subsection 1 of section 288.050 that a claimant quit temporary work in
56 employment with an employer to return to the claimant's regular employer, then, only for the

57 purpose of charging base period employers, all of the wages paid by the employer who furnished
58 the temporary employment shall be combined with the wages actually paid by the regular
59 employer as if all such wages had been actually paid by the regular employer. Further, charges
60 for benefits based on wages paid for part-time work shall be removed from the account of the
61 employer furnishing such part-time work if that employer continued to employ the individual
62 claiming such benefits on a regular recurring basis each week of the claimant's claim to at least
63 the same extent that the employer had previously employed the claimant and so informs the
64 division within thirty days from the date of notice of benefit charges.

65 (d) No charge shall be made against an employer's account in respect to benefits paid an
66 individual if the gross amount of wages paid by such employer to such individual is four hundred
67 dollars or less during the individual's base period on which the individual's benefit payments are
68 based. Further, no charge shall be made against any employer's account in respect to benefits
69 paid any individual unless such individual was in employment with respect to such employer
70 longer than a probationary period of twenty-eight days, if such probationary period of
71 employment has been reported to the division as required by regulation.

72 (e) In the event the deputy has in due course determined pursuant to paragraph (c) of
73 subdivision (1) of subsection 1 of section 288.050 that a claimant is not disqualified, no benefits
74 based on wages paid for work prior to the date of the quit shall be chargeable to the employer
75 the claimant quit.

76 (f) In the event the deputy has in due course determined under paragraph (e) of
77 subdivision (1) of subsection 1 of section 288.050 that a claimant is not disqualified, no benefits
78 based on wages paid for work prior to the date of the quit shall be chargeable to the employer
79 the claimant quit.

80 (g) Nothing in paragraph (b), (c), (d), (e), or (f) of this subdivision shall in any way affect
81 the benefit amount, duration of benefits or the wage credits of the claimant.

82 **2. (1) Notwithstanding any other provisions of this law, no employer's account shall**
83 **be relieved of charges relating to a payment that was erroneously made from the**
84 **unemployment compensation fund if the division determines that:**

85 **(a) The erroneous payment was made because the employer or an agent of the**
86 **employer was at fault for failing to respond timely or adequately to a written request from**
87 **the division for information relating to a claim for unemployment benefits; and**

88 **(b) The employer or an agent of the employer has established a pattern of failing**
89 **to respond timely or adequately to requests made under paragraph (a) of this subdivision.**

90 **(2) For the purpose of this subsection, the following terms shall mean:**

91 **(a) "Erroneous payment", a payment that, but for the failure by the employer or**
92 **the agent of the employer to respond timely and adequately to a written request from the**

93 **division for information with respect to the claim for unemployment benefits, would not**
94 **have been made;**

95 **(b) “Pattern of failing”, repeated documented failure on the part of the employer**
96 **or the agent of the employer to respond, taking into consideration the number of instances**
97 **of failure in relation to the total volume of requests. An employer or an agent of the**
98 **employer failing to respond as described under paragraph (a) of subdivision (1) of this**
99 **subsection shall not be determined to have engaged in a pattern of failure if the number**
100 **of the failures during the year prior to the request is fewer than two or less than two**
101 **percent of the requests, whichever is greater.**

102 **(3) Determinations by the division prohibiting the relief of charges under this**
103 **subsection shall be subject to appeal or protest as other determinations of the division with**
104 **respect to the charging of employer accounts.**

105 **(4) This subsection shall apply to erroneous payments established on or after**
106 **October 1, 2013.**

107 **3.** The division may prescribe regulations for the establishment, maintenance, and
108 dissolution of joint accounts by two or more employers, and shall, in accordance with such
109 regulations and upon application by two or more employers to establish such an account, or to
110 merge their several individual accounts in a joint account, maintain such joint account as if it
111 constituted a single employer's account.

112 [3.] **4.** The division may by regulation provide for the compilation and publication of
113 such data as may be necessary to show the amounts of benefits not charged to any individual
114 employer's account classified by reason no such charge was made and to show the types and
115 amounts of transactions affecting the unemployment compensation fund.

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
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 **state or federal**
49 unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any

50 material fact has committed fraud. After the discovery of facts indicating fraud, a deputy shall
51 make a written determination that the individual obtained or denied unemployment benefits by
52 fraud and that the individual must promptly repay the unemployment benefits to the fund. In
53 addition, the deputy shall assess a penalty equal to twenty-five percent of the amount fraudulently
54 obtained or denied. If division records indicate that the individual or employer had a prior
55 established overpayment or record of denial due to fraud, the deputy shall, on the present
56 overpayment or determination, assess a penalty equal to one hundred percent of the amount
57 fraudulently obtained.

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

62 (3) If the individual or employer fails to repay the unemployment benefits and penalty,
63 assessed as a result of the deputy's determination that the individual or employer obtained or
64 denied unemployment benefits by fraud, such sum shall be collectible in the manner provided
65 in sections 288.160 and 288.170 for the collection of past due contributions. If the individual
66 or employer fails to repay the unemployment benefits that the individual or employer denied or
67 obtained by fraud, the division may offset from any future unemployment benefits otherwise
68 payable the amount of the overpayment, or may take such steps as are necessary to effect
69 payment from the individual or employer. Future benefits may not be used to offset the penalty
70 due. Money received in repayment of fraudulently obtained or denied unemployment benefits
71 and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty
72 amount due. **Effective October 1, 2013, regarding payments made toward the penalty amount**
73 **[due] , an amount equal to fifteen percent of the total amount of benefits fraudulently**
74 **obtained shall be immediately deposited into the state's unemployment compensation fund,**
75 **and the remaining penalty amount** shall be credited to the special employment security fund.

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

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

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

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

91 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or
92 may become due or payable pursuant to this chapter shall be void; and such rights to benefits
93 shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for
94 the collection of debt; and benefits received by any individual, so long as they are not mingled
95 with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection
96 of all debts except debts incurred for necessities furnished to such individual or the individual's
97 spouse or dependents during the time such individual was unemployed. Any waiver of any
98 exemption provided for in this subsection shall be void; except that this section shall not apply
99 to:

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

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

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

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

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

120 b. The amount, if any, determined pursuant to an agreement submitted to the division
121 pursuant to Section 454(20)(B)(i) of the Social Security Act by the state or local support

122 enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if
123 any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to
124 Section 13(c)(3)(a) of the Food Stamp Act of 1977; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183 13. Any person who, by reason of any error or omission or because of a lack of
184 knowledge of material fact on the part of the division, has received any sum of benefits pursuant
185 to this chapter while any conditions for the receipt of benefits imposed by this chapter were not
186 fulfilled in such person's case, or while such person was disqualified from receiving benefits,
187 shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such
188 sums deducted from any further benefits payable to such person pursuant to this chapter,
189 provided that the division may elect not to process such possible overpayments where the amount
190 of same is not over twenty percent of the maximum state weekly benefit amount in effect at the
191 time the error or omission was discovered.

192 14. Recovering overpaid unemployment compensation benefits shall be pursued by the
193 division against any person receiving such overpaid unemployment compensation benefits

194 through billing, setoffs against state and federal tax refunds to the extent permitted by federal
195 law, intercepts of lottery winnings under section 313.321, and collection efforts as provided for
196 in sections 288.160, 288.170, and 288.175.

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

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