

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 611
97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, May 8, 2013, with recommendation that the Senate Committee Substitute do pass.

1384S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 285.300, 285.515, 288.030, 288.050, 288.100, and 288.380, RSMo, and to enact in lieu thereof six new sections relating to employment, with penalty provisions.

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

Section A. Sections 285.300, 285.515, 288.030, 288.050, 288.100, and
2 288.380, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 285.300, 285.515, 288.030, 288.050, 288.100, and 288.380, to
4 read as follows:

285.300. 1. Every employer doing business in the state shall require each
2 newly hired employee to fill out a federal W-4 withholding form. A copy of each
3 withholding form or an equivalent form containing data required by section
4 285.304 which may be provided in an electronic or magnetic format shall be sent
5 to the department of revenue by the employer within twenty days after the date
6 the employer hires the employee or in the case of an employer transmitting a
7 report magnetically or electronically, by two monthly transmissions, if necessary,
8 not less than twelve days nor more than sixteen days apart. For purposes of this
9 section, the date the employer hires the employee shall be the earlier of the date
10 the employee signs the W-4 form or its equivalent, or the first date the employee
11 reports to work, or performs labor or services. Such forms shall be forwarded by
12 the department of revenue to the division of child support enforcement on a
13 weekly basis and the information shall be entered into the database, to be known
14 as the "State Directory of New Hires". The information reported shall be

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

15 provided to the National Directory of New Hires established in 42 U.S.C. section
16 653, other state agencies or contractors of the division as required or allowed by
17 federal statutes or regulations. The division of employment security shall
18 cross-check Missouri unemployment compensation recipients against any federal
19 new hire database or any other database containing Missouri or other states'
20 wage information which is maintained by the federal government on a weekly
21 basis. The division of employment security shall cross-check unemployment
22 compensation applicants and recipients with Social Security Administration data
23 maintained by the federal government at least weekly. Effective January 1, 2007,
24 the division of employment security shall cross-check at least monthly
25 unemployment compensation applicants and recipients with department of
26 revenue drivers license databases.

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

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

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

34 **3. For the purposes of this section, "newly hired employee"**
35 **means an employee who:**

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

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

285.515. 1. If a court determines that an employer has knowingly
2 misclassified a worker, the court shall enter a judgment in favor of the state and
3 award penalties in the amount of fifty dollars per day per misclassified worker
4 up to a maximum of fifty thousand dollars. The attorney general may enter into
5 a consent judgment with any person alleged to have violated sections 285.500 to
6 285.515.

7 **2. If the department of labor and industrial relations conducts**
8 **an audit and finds that an individual is misclassified as an independent**
9 **contractor and should be reclassified as an employee, and the finding**
10 **is appealed, the fine and the assessment for interest levied against an**
11 **employer for misclassifying the employee under this section shall be**

12 **tolled while the finding of the department is appealed, barring the**
13 **absence of fraud on the part of the employer.**

288.030. 1. As used in this chapter, unless the context clearly requires
2 otherwise, the following terms mean:

3 (1) "Appeals tribunal", a referee or a body consisting of three referees
4 appointed to conduct hearings and make decisions on appeals from administrative
5 determinations, petitions for reassessment, and claims referred pursuant to
6 subsection 2 of section 288.070;

7 (2) "Base period", the first four of the last five completed calendar
8 quarters immediately preceding the first day of an individual's benefit year;

9 (3) "Benefit year", the one-year period beginning with the first day of the
10 first week with respect to which an insured worker first files an initial claim for
11 determination of such worker's insured status, and thereafter the one-year period
12 beginning with the first day of the first week with respect to which the
13 individual, providing the individual is then an insured worker, next files such an
14 initial claim after the end of the individual's last preceding benefit year;

15 (4) "Benefits", the money payments payable to an insured worker, as
16 provided in this chapter, with respect to such insured worker's unemployment;

17 (5) "Calendar quarter", the period of three consecutive calendar months
18 ending on March thirty-first, June thirtieth, September thirtieth, or December
19 thirty-first;

20 (6) "Claimant", an individual who has filed an initial claim for
21 determination of such individual's status as an insured worker, a notice of
22 unemployment, a certification for waiting week credit, or a claim for benefits;

23 (7) "Commission", the labor and industrial relations commission of
24 Missouri;

25 (8) "Common paymaster", two or more related corporations in which one
26 of the corporations has been designated to disburse remuneration to concurrently
27 employed individuals of any of the related corporations;

28 (9) "Contributions", the money payments to the unemployment
29 compensation fund required by this chapter, exclusive of interest and penalties;

30 (10) "Decision", a ruling made by an appeals tribunal or the commission
31 after a hearing;

32 (11) "Deputy", a representative of the division designated to make
33 investigations and administrative determinations on claims or matters of
34 employer liability or to perform related work;

35 (12) "Determination", any administrative ruling made by the division
36 without a hearing;

37 (13) "Director", the administrative head of the division of employment
38 security;

39 (14) "Division", the division of employment security which administers
40 this chapter;

41 (15) "Employing unit", any individual, organization, partnership,
42 corporation, common paymaster, or other legal entity, including the legal
43 representatives thereof, which has or, subsequent to June 17, 1937, had in its
44 employ one or more individuals performing services for it within this state. All
45 individuals performing services within this state for any employing unit which
46 maintains two or more separate establishments within this state shall be deemed
47 to be employed by a single employing unit for all the purposes of this
48 chapter. Each individual engaged to perform or to assist in performing the work
49 of any person in the service of an employing unit shall be deemed to be engaged
50 by such employing unit for all the purposes of this chapter, whether such
51 individual was engaged or paid directly by such employing unit or by such person,
52 provided the employing unit had actual or constructive knowledge of the work;

53 (16) "Employment office", a free public employment office operated by this
54 or any other state as a part of a state controlled system of public employment
55 offices including any location designated by the state as being a part of the
56 one-stop career system;

57 (17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full
58 trailer, any combination of these and any other type of equipment used by
59 authorized carriers in the transportation of property for hire;

60 (18) "Fund", the unemployment compensation fund established by this
61 chapter;

62 (19) "Governmental entity", the state, any political subdivision thereof,
63 any instrumentality of any one or more of the foregoing which is wholly owned by
64 this state and one or more other states or political subdivisions and any
65 instrumentality of this state or any political subdivision thereof and one or more
66 other states or political subdivisions;

67 (20) "Initial claim", an application, in a form prescribed by the division,
68 made by an individual for the determination of the individual's status as an
69 insured worker;

70 (21) "Insured work", employment in the service of an employer;

71 (22) (a) As to initial claims filed after December 31, 1990, "insured
72 worker", a worker who has been paid wages for insured work in the amount of
73 one thousand dollars or more in at least one calendar quarter of such worker's
74 base period and total wages in the worker's base period equal to at least one and
75 one-half times the insured wages in that calendar quarter of the base period in
76 which the worker's insured wages were the highest, or in the alternative, a
77 worker who has been paid wages in at least two calendar quarters of such
78 worker's base period and whose total base period wages are at least one and
79 one-half times the maximum taxable wage base, taxable to any one employer, in
80 accordance with subsection 2 of section 288.036. For the purposes of this
81 definition, "wages" shall be considered as wage credits with respect to any benefit
82 year, only if such benefit year begins subsequent to the date on which the
83 employing unit by which such wages were paid has become an employer;

84 (b) As to initial claims filed after December 31, 2004, wages for insured
85 work in the amount of one thousand two hundred dollars or more, after December
86 31, 2005, one thousand three hundred dollars or more, after December 31, 2006,
87 one thousand four hundred dollars or more, after December 31, 2007, one
88 thousand five hundred dollars or more in at least one calendar quarter of such
89 worker's base period and total wages in the worker's base period equal to at least
90 one and one-half times the insured wages in that calendar quarter of the base
91 period in which the worker's insured wages were the highest, or in the
92 alternative, a worker who has been paid wages in at least two calendar quarters
93 of such worker's base period and whose total base period wages are at least one
94 and one-half times the maximum taxable wage base, taxable to any one employer,
95 in accordance with subsection 2 of section 288.036;

96 (23) "Misconduct", [an act of wanton or willful disregard of the employer's
97 interest, a deliberate violation of the employer's rules, a disregard of standards
98 of behavior which the employer has the right to expect of his or her employee, or
99 negligence in such degree or recurrence as to manifest culpability, wrongful
100 intent or evil design, or show an intentional and substantial disregard of the
101 employer's interest or of the employee's duties and obligations to the employer]
102 **misconduct reasonably related to the job environment and the job**
103 **performance regardless of whether the misconduct occurs at the**
104 **workplace or during work hours, includes:**

105 (a) **Conduct or a failure to act demonstrating knowing disregard**
106 **of the employer's interest or a knowing violation of the standards**

107 **which the employer expects of his or her employee;**

108 **(b) Conduct or a failure to act demonstrating carelessness or**
109 **negligence in such degree or recurrence as to manifest culpability,**
110 **wrongful intent, or a knowing disregard of the employer's interest or**
111 **of the employee's duties and obligations to the employer;**

112 **(c) Violation of an employer's no-call, no-show policy; chronic**
113 **absenteeism or tardiness in violation of a known policy of the**
114 **employer; or one or more unapproved absences following a written**
115 **reprimand or warning relating to an unapproved absence;**

116 **(d) A knowing violation of a state standard or regulation by an**
117 **employee of an employer licensed or certified by the state, which would**
118 **cause the employer to be sanctioned or have its license or certification**
119 **suspended or revoked; or**

120 **(e) A violation of an employer's rule, unless the employee can**
121 **demonstrate that:**

122 **a. He or she did not know, and could not reasonably know, of the**
123 **rules requirements; or**

124 **b. The rule is not lawful;**

125 (24) "Referee", a representative of the division designated to serve on an
126 appeals tribunal;

127 (25) "State" includes, in addition to the states of the United States of
128 America, the District of Columbia, Puerto Rico, the Virgin Islands, and the
129 Dominion of Canada;

130 (26) "Temporary employee", an employee assigned to work for the clients
131 of a temporary help firm;

132 (27) "Temporary help firm", a firm that hires its own employees and
133 assigns them to clients to support or supplement the clients' workforce in work
134 situations such as employee absences, temporary skill shortages, seasonal
135 workloads, and special assignments and projects;

136 (28) (a) An individual shall be deemed "totally unemployed" in any week
137 during which the individual performs no services and with respect to which no
138 wages are payable to such individual;

139 (b) a. An individual shall be deemed "partially unemployed" in any week
140 of less than full-time work if the wages payable to such individual for such week
141 do not equal or exceed the individual's weekly benefit amount plus twenty dollars;

142 b. Effective for calendar year 2007 and each year thereafter, an individual

143 shall be deemed "partially unemployed" in any week of less than full-time work
144 if the wages payable to such individual for such week do not equal or exceed the
145 individual's weekly benefit amount plus twenty dollars or twenty percent of his
146 or her weekly benefit amount, whichever is greater;

147 (c) An individual's "week of unemployment" shall begin the first day of the
148 calendar week in which the individual registers at an employment office except
149 that, if for good cause the individual's registration is delayed, the week of
150 unemployment shall begin the first day of the calendar week in which the
151 individual would have otherwise registered. The requirement of registration may
152 by regulation be postponed or eliminated in respect to claims for partial
153 unemployment or may by regulation be postponed in case of a mass layoff due to
154 a temporary cessation of work;

155 (29) "Waiting week", the first week of unemployment for which a claim is
156 allowed in a benefit year or if no waiting week has occurred in a benefit year in
157 effect on the effective date of a shared work plan, the first week of participation
158 in a shared work unemployment compensation program pursuant to section
159 288.500.

160 2. The Missouri average annual wage shall be computed as of June
161 thirtieth of each year, and shall be applicable to the following calendar year. The
162 Missouri average annual wage shall be calculated by dividing the total wages
163 reported as paid for insured work in the preceding calendar year by the average
164 of mid-month employment reported by employers for the same calendar year. The
165 Missouri average weekly wage shall be computed by dividing the Missouri
166 average annual wage as computed in this subsection by fifty-two.

288.050. 1. Notwithstanding the other provisions of this law, a claimant
2 shall be disqualified for waiting week credit or benefits until after the claimant
3 has earned wages for work insured pursuant to the unemployment compensation
4 laws of any state equal to ten times the claimant's weekly benefit amount if the
5 deputy finds:

6 (1) That the claimant has left work voluntarily without good cause
7 attributable to such work or to the claimant's employer. A temporary employee
8 of a temporary help firm will be deemed to have voluntarily quit employment if
9 the employee does not contact the temporary help firm for reassignment prior to
10 filing for benefits. Failure to contact the temporary help firm will not be deemed
11 a voluntary quit unless the claimant has been advised of the obligation to contact
12 the firm upon completion of assignments and that unemployment benefits may

13 be denied for failure to do so. **"Good cause", for the purposes of this**
14 **subdivision, shall include only that cause which would compel a**
15 **reasonable employee to cease working or which would require**
16 **separation from work due to illness or disability.** The claimant shall not
17 be disqualified:

18 (a) If the deputy finds the claimant quit such work for the purpose of
19 accepting a more remunerative job which the claimant did accept and earn some
20 wages therein;

21 (b) If the claimant quit temporary work to return to such claimant's
22 regular employer; or

23 (c) If the deputy finds the individual quit work, which would have been
24 determined not suitable in accordance with paragraphs (a) and (b) of subdivision
25 (3) of this subsection, within twenty-eight calendar days of the first day worked;

26 (d) As to initial claims filed after December 31, 1988, if the claimant
27 presents evidence supported by competent medical proof that she was forced to
28 leave her work because of pregnancy, notified her employer of such necessity as
29 soon as practical under the circumstances, and returned to that employer and
30 offered her services to that employer as soon as she was physically able to return
31 to work, as certified by a licensed and practicing physician, but in no event later
32 than ninety days after the termination of the pregnancy. An employee shall have
33 been employed for at least one year with the same employer before she may be
34 provided benefits pursuant to the provisions of this paragraph;

35 (e) If the deputy finds that, due to the spouse's mandatory and permanent
36 military change of station order, the claimant quit work to relocate with the
37 spouse to a new residence from which it is impractical to commute to the place
38 of employment and the claimant remained employed as long as was reasonable
39 prior to the move. The claimant's spouse shall be a member of the U.S. Armed
40 Forces who is on active duty, or a member of the National Guard or other reserve
41 component of the U.S. Armed Forces who is on active National Guard or reserve
42 duty. The provisions of this paragraph shall only apply to individuals who have
43 been determined to be an insured worker as provided in subdivision (22) of
44 subsection 1 of section 288.030;

45 (2) That the claimant has retired pursuant to the terms of a labor
46 agreement between the claimant's employer and a union duly elected by the
47 employees as their official representative or in accordance with an established
48 policy of the claimant's employer; or

49 (3) That the claimant failed without good cause either to apply for
50 available suitable work when so directed by a deputy of the division or designated
51 staff of an employment office as defined in subsection 1 of section 288.030, or to
52 accept suitable work when offered the claimant, either through the division or
53 directly by an employer by whom the individual was formerly employed, or to
54 return to the individual's customary self-employment, if any, when so directed by
55 the deputy. An offer of work shall be rebuttably presumed if an employer notifies
56 the claimant in writing of such offer by sending an acknowledgment via any form
57 of certified mail issued by the United States Postal Service stating such offer to
58 the claimant at the claimant's last known address. Nothing in this subdivision
59 shall be construed to limit the means by which the deputy may establish that the
60 claimant has or has not been sufficiently notified of available work.

61 (a) In determining whether or not any work is suitable for an individual,
62 the division shall consider, among other factors and in addition to those
63 enumerated in paragraph (b) of this subdivision, the degree of risk involved to the
64 individual's health, safety and morals, the individual's physical fitness and prior
65 training, the individual's experience and prior earnings, the individual's length
66 of unemployment, the individual's prospects for securing work in the individual's
67 customary occupation, the distance of available work from the individual's
68 residence and the individual's prospect of obtaining local work; except that, if an
69 individual has moved from the locality in which the individual actually resided
70 when such individual was last employed to a place where there is less probability
71 of the individual's employment at such individual's usual type of work and which
72 is more distant from or otherwise less accessible to the community in which the
73 individual was last employed, work offered by the individual's most recent
74 employer if similar to that which such individual performed in such individual's
75 last employment and at wages, hours, and working conditions which are
76 substantially similar to those prevailing for similar work in such community, or
77 any work which the individual is capable of performing at the wages prevailing
78 for such work in the locality to which the individual has moved, if not hazardous
79 to such individual's health, safety or morals, shall be deemed suitable for the
80 individual;

81 (b) Notwithstanding any other provisions of this law, no work shall be
82 deemed suitable and benefits shall not be denied pursuant to this law to any
83 otherwise eligible individual for refusing to accept new work under any of the
84 following conditions:

85 a. If the position offered is vacant due directly to a strike, lockout, or
86 other labor dispute;

87 b. If the wages, hours, or other conditions of the work offered are
88 substantially less favorable to the individual than those prevailing for similar
89 work in the locality;

90 c. If as a condition of being employed the individual would be required to
91 join a company union or to resign from or refrain from joining any bona fide labor
92 organization.

93 2. If a deputy finds that a claimant has been discharged for misconduct
94 connected with the claimant's work, such claimant shall be disqualified for
95 waiting week credit and benefits, and no benefits shall be paid nor shall the cost
96 of any benefits be charged against any employer for any period of employment
97 within the base period until the claimant has earned wages for work insured
98 under the unemployment laws of this state or any other state as prescribed in
99 this section. In addition to the disqualification for benefits pursuant to this
100 provision the division may in the more aggravated cases of misconduct cancel all
101 or any part of the individual's wage credits, which were established through the
102 individual's employment by the employer who discharged such individual,
103 according to the seriousness of the misconduct. A disqualification provided for
104 pursuant to this subsection shall not apply to any week which occurs after the
105 claimant has earned wages for work insured pursuant to the unemployment
106 compensation laws of any state in an amount equal to six times the claimant's
107 weekly benefit amount. Should a claimant be disqualified on a second or
108 subsequent occasion within the base period or subsequent to the base period the
109 claimant shall be required to earn wages in an amount equal to or in excess of six
110 times the claimant's weekly benefit amount for each disqualification.

111 3. [Absenteeism or tardiness may constitute a rebuttable presumption of
112 misconduct, regardless of whether the last incident alone constitutes misconduct,
113 if the discharge was the result of a violation of the employer's attendance policy,
114 provided the employee had received knowledge of such policy prior to the
115 occurrence of any absence or tardy upon which the discharge is based.

116 4.] Notwithstanding the provisions of subsection 1 of this section, a
117 claimant may not be determined to be disqualified for benefits because the
118 claimant is in training approved pursuant to Section 236 of the Trade Act of 1974,
119 as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left
120 work which was not suitable employment to enter such training. For the

121 purposes of this subsection "suitable employment" means, with respect to a
122 worker, work of a substantially equal or higher skill level than the worker's past
123 adversely affected employment, and wages for such work at not less than eighty
124 percent of the worker's average weekly wage as determined for the purposes of
125 the Trade Act of 1974.

288.100. 1. (1) The division shall maintain a separate account for each
2 employer which is paying contributions, and shall credit each employer's account
3 with all contributions which each employer has paid. A separate account shall
4 be maintained for each employer making payments in lieu of contributions to
5 which shall be credited all such payments made. The account shall also show
6 payments due as provided in section 288.090. The division may close and cancel
7 such separate account after a period of four consecutive calendar years during
8 which such employer has had no employment in this state subject to
9 contributions. Nothing in this law shall be construed to grant any employer or
10 individuals in the employer's service prior claims or rights to the amounts paid
11 by the employer into the fund either on the employer's own behalf or on behalf
12 of such individuals. Except as provided in subdivision (4) of this subsection,
13 regular benefits and that portion of extended benefits not reimbursed by the
14 federal government paid to an eligible individual shall be charged against the
15 accounts of the individual's base period employers who are paying contributions
16 subject to the provisions of subdivision (4) of subsection 3 of section
17 288.090. With respect to initial claims filed after December 31, 1984, for benefits
18 paid to an individual based on wages paid by one or more employers in the base
19 period of the claim, the amount chargeable to each employer shall be obtained by
20 multiplying the benefits paid by a ratio obtained by dividing the base period
21 wages from such employer by the total wages appearing in the base
22 period. Except as provided in this subdivision, the maximum amount of extended
23 benefits paid to an individual and charged against the account of any employer
24 shall not exceed one-half of the product obtained by multiplying the benefits paid
25 by a ratio obtained by dividing the base period wages from such employer by the
26 total wages appearing in the base period. The provisions of this subdivision
27 notwithstanding, with respect to weeks of unemployment beginning after
28 December 31, 1978, the maximum amount of extended benefits paid to an
29 individual and charged against the account of an employer which is an employer
30 pursuant to subdivision (3) of subsection 1 of section 288.032 and which is paying
31 contributions pursuant to subsections 1 and 2 of section 288.090 shall not exceed

32 the calculated entitlement for the extended benefit claim based upon the wages
33 appearing within the base period of the extended benefit claim.

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

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

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

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

64 (c) In the event the deputy has in due course determined pursuant to
65 paragraph (b) of subdivision (1) of subsection 1 of section 288.050 that a claimant
66 quit temporary work in employment with an employer to return to the claimant's
67 regular employer, then, only for the purpose of charging base period employers,

68 all of the wages paid by the employer who furnished the temporary employment
69 shall be combined with the wages actually paid by the regular employer as if all
70 such wages had been actually paid by the regular employer. Further, charges for
71 benefits based on wages paid for part-time work shall be removed from the
72 account of the employer furnishing such part-time work if that employer
73 continued to employ the individual claiming such benefits on a regular recurring
74 basis each week of the claimant's claim to at least the same extent that the
75 employer had previously employed the claimant and so informs the division
76 within thirty days from the date of notice of benefit charges.

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

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

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

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

97 **2. (1) Notwithstanding any other provisions of this law, no**
98 **employer's account shall be relieved of charges relating to a payment**
99 **that was erroneously made from the unemployment compensation fund**
100 **if the division determines that:**

101 (a) **The erroneous payment was made because the employer or**
102 **an agent of the employer was at fault for failing to respond timely or**
103 **adequately to a written request from the division for information**

104 relating to a claim for unemployment benefits; and

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

108 (2) For the purpose of this subsection, the following terms shall
109 mean:

110 (a) "Erroneous payment", a payment that, but for the failure by
111 the employer or the agent of the employer to respond timely and
112 adequately to a written request from the division for information with
113 respect to the claim for unemployment benefits, would not have been
114 made;

115 (b) "Pattern of failing", repeated documented failure on the part
116 of the employer or the agent of the employer to respond, taking into
117 consideration the number of instances of failure in relation to the total
118 volume of requests. An employer or an agent of the employer failing to
119 respond as described under paragraph (a) of subdivision (1) of this
120 subsection shall not be determined to have engaged in a pattern of
121 failure if the number of the failures during the year prior to the
122 request is fewer than two or less than two percent of the requests,
123 whichever is greater.

124 (3) Determinations by the division prohibiting the relief of
125 charges under this subsection shall be subject to appeal or protest as
126 other determinations of the division with respect to the charging of
127 employer accounts.

128 (4) This subsection shall apply to erroneous payments
129 established on or after October 1, 2013.

130 3. The division may prescribe regulations for the establishment,
131 maintenance, and dissolution of joint accounts by two or more employers, and
132 shall, in accordance with such regulations and upon application by two or more
133 employers to establish such an account, or to merge their several individual
134 accounts in a joint account, maintain such joint account as if it constituted a
135 single employer's account.

136 [3.] 4. The division may by regulation provide for the compilation and
137 publication of such data as may be necessary to show the amounts of benefits not
138 charged to any individual employer's account classified by reason no such charge
139 was made and to show the types and amounts of transactions affecting the
140 unemployment compensation fund.

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

9 2. No employing unit or any agent of an employing unit or any other
10 person shall make a false statement or representation knowing it to be false, nor
11 shall knowingly fail to disclose a material fact to prevent or reduce the payment
12 of benefits to any individual, nor to avoid becoming or remaining an employer,
13 nor to avoid or reduce any contribution or other payment required from any
14 employing unit, nor shall willfully fail or refuse to make any contributions or
15 payments nor to furnish any required reports nor to produce or permit the
16 inspection or copying of required records. Each such requirement shall apply
17 regardless of whether it is a requirement of this chapter, of an employment
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 **state or**
58 **federal** unemployment benefits by intentionally misrepresenting, misstating, or
59 failing to disclose any material fact has committed fraud. After the discovery of
60 facts indicating fraud, a deputy shall make a written determination that the
61 individual obtained or denied unemployment benefits by fraud and that the
62 individual must promptly repay the unemployment benefits to the fund. In
63 addition, the deputy shall assess a penalty equal to twenty-five percent of the
64 amount fraudulently obtained or denied. If division records indicate that the
65 individual or employer had a prior established overpayment or record of denial
66 due to fraud, the deputy shall, on the present overpayment or determination,
67 assess a penalty equal to one hundred percent of the amount fraudulently
68 obtained.

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

73 conducted in accordance with section 288.190.

74 (3) If the individual or employer fails to repay the unemployment benefits
75 and penalty, assessed as a result of the deputy's determination that the
76 individual or employer obtained or denied unemployment benefits by fraud, such
77 sum shall be collectible in the manner provided in sections 288.160 and 288.170
78 for the collection of past due contributions. If the individual or employer fails to
79 repay the unemployment benefits that the individual or employer denied or
80 obtained by fraud, the division may offset from any future unemployment benefits
81 otherwise payable the amount of the overpayment, or may take such steps as are
82 necessary to effect payment from the individual or employer. Future benefits may
83 not be used to offset the penalty due. Money received in repayment of
84 fraudulently obtained or denied unemployment benefits and penalties shall first
85 be applied to the unemployment benefits overpaid, then to the penalty amount
86 due. **Effective October 1, 2013, regarding** payments made toward the penalty
87 amount [due], **an amount equal to fifteen percent of the total amount of**
88 **benefits fraudulently obtained shall be immediately deposited into the**
89 **state's unemployment compensation fund, and the remaining penalty**
90 **amount** shall be credited to the special employment security fund.

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

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

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

109 11. (1) Any assignment, pledge, or encumbrance of any rights to benefits
110 which are or may become due or payable pursuant to this chapter shall be void;
111 and such rights to benefits shall be exempt from levy, execution, attachment, or
112 any other remedy whatsoever provided for the collection of debt; and benefits
113 received by any individual, so long as they are not mingled with other funds of
114 the recipient, shall be exempt from any remedy whatsoever for the collection of
115 all debts except debts incurred for necessities furnished to such individual or the
116 individual's spouse or dependents during the time such individual was
117 unemployed. Any waiver of any exemption provided for in this subsection shall
118 be void; except that this section shall not apply to:

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

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

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

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

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

143 b. The amount, if any, determined pursuant to an agreement submitted
144 to the division pursuant to Section 454(20)(B)(i) of the Social Security Act by the

145 state or local support enforcement agency, unless subparagraph c. of this
146 paragraph is applicable; or the amount (if any) determined pursuant to an
147 agreement submitted to the state food stamp agency pursuant to Section
148 13(c)(3)(a) of the Food Stamp Act of 1977; or

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

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

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

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

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

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

179 (h) The term "state or local support enforcement agency", as used in this
180 subsection, means any agency of a state, or political subdivision thereof, operating

181 pursuant to a plan described in paragraph (g) of this subdivision;

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

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

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

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

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

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

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

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

228 14. Recovering overpaid unemployment compensation benefits shall be
229 pursued by the division against any person receiving such overpaid
230 unemployment compensation benefits through billing, setoffs against state and
231 federal tax refunds to the extent permitted by federal law, intercepts of lottery
232 winnings under section 313.321, and collection efforts as provided for in sections
233 288.160, 288.170, and 288.175.

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

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