

ASSEMBLY, No. 3132

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

SYNOPSIS

Requires Department of the Treasury to collect for overpayment of UI benefits.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the overpayment of unemployment
2 compensation benefits, amending various parts of the statutory
3 law and supplementing chapter 21 of Title 43 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. R.S.43:21-16 is amended to read as follows:

10 43:21-16. (a) (1) Whoever makes a false statement or
11 representation, knowing it to be false, or knowingly fails to disclose
12 a material fact, to obtain or increase or attempts to obtain or
13 increase any benefit or other payment under this chapter
14 (R.S.43:21-1 et seq.), or under an employment security law of any
15 other state or of the federal government, either for himself or for
16 any other person, shall be liable to a fine of 25% of the amount
17 fraudulently obtained, to be recovered in an action at law in the
18 name of the Division of Unemployment and Temporary Disability
19 Insurance of the Department of Labor and Workforce Development
20 of the State of New Jersey or as provided in subsection (e) of
21 R.S.43:21-14, said fine when recovered shall be immediately
22 deposited in the following manner: 10 percent of the amount
23 fraudulently obtained deposited into the unemployment
24 compensation auxiliary fund for the use of said fund, and 15 percent
25 of the amount fraudulently obtained deposited into the
26 unemployment compensation fund; and each such false statement or
27 representation or failure to disclose a material fact shall constitute a
28 separate offense. Any penalties imposed by this subsection shall be
29 in addition to those otherwise prescribed in this chapter (R.S.43:21-
30 1 et seq.).

31 (2) For purposes of any unemployment compensation program
32 of the United States, if the department determines that any benefit
33 amount is obtained by an individual due to fraud committed by the
34 individual, the department shall assess a fine on the individual and
35 deposit the recovered fine in the same manner as provided in
36 paragraph (1) of subsection (a) of this section. As used in this
37 paragraph, "unemployment compensation program of the United
38 States" means:

39 (A) Unemployment compensation for federal civilian employees
40 pursuant to 5 U.S.C. 8501 et seq.;

41 (B) Unemployment compensation for ex-service members
42 pursuant to 5 U.S.C. 8521 et seq.;

43 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
44 2294;

45 (D) Disaster unemployment assistance pursuant to 42 U.S.C.

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

Matter underlined thus is new matter.

1 5177(a);

2 (E) Any federal temporary extension of unemployment
3 compensation;

4 (F) Any federal program that increases the weekly amount of
5 unemployment compensation payable to individuals; and

6 (G) Any other federal program providing for the payment of
7 unemployment compensation.

8 (b) (1) An employing unit or any officer or agent of an
9 employing unit or any other person who makes a false statement or
10 representation, knowing it to be false, or who knowingly fails to
11 disclose a material fact, to prevent or reduce the payment of
12 benefits to any individual entitled thereto or to avoid becoming or
13 remaining subject hereto or to avoid or reduce any contribution or
14 other payment required from an employing unit under this chapter
15 (R.S.43:21-1 et seq.), or under an employment security law of any
16 other state or of the federal government, or who willfully fails or
17 refuses to furnish any reports required hereunder (except for such
18 reports as may be required under subsection (b) of R.S.43:21-6) or
19 to produce or permit the inspection or copying of records, as
20 required hereunder, shall be liable to a fine of \$100.00, or 25% of
21 the amount fraudulently withheld, whichever is greater, to be
22 recovered in an action at law in the name of the Division of
23 Unemployment and Temporary Disability Insurance of the
24 Department of Labor and Workforce Development of the State of
25 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
26 fine when recovered to be paid to the unemployment compensation
27 auxiliary fund for the use of said fund; and each such false
28 statement or representation or failure to disclose a material fact, and
29 each day of such failure or refusal shall constitute a separate
30 offense. Any penalties imposed by this paragraph shall be in
31 addition to those otherwise prescribed in this chapter (R.S.43:21-1
32 et seq.).

33 (2) Any employing unit or any officer or agent of an employing
34 unit or any other person who fails to submit any report required
35 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
36 \$25.00 for the first report not submitted within 10 days after the
37 mailing of a request for such report, and an additional \$25.00
38 penalty may be assessed for the next 10-day period, which may
39 elapse after the end of the initial 10-day period and before the
40 report is filed; provided that when such report or reports are not
41 filed within the prescribed time but it is shown to the satisfaction of
42 the director that the failure was due to a reasonable cause, no such
43 penalty shall be imposed. Any penalties imposed by this paragraph
44 shall be recovered as provided in subsection (e) of R.S.43:21-14,
45 and when recovered shall be paid to the unemployment
46 compensation auxiliary fund for the use of said fund.

47 (3) Any employing unit, officer or agent of the employing unit,
48 or any other person, determined by the controller to have knowingly

1 violated, or attempted to violate, or advised another person to
2 violate the transfer of employment experience provisions found at
3 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
4 a lower rate of contributions by failing to disclose material
5 information, or by making a false statement, or by a
6 misrepresentation of fact, shall be subject to a fine of \$5,000 or
7 25% of the contributions under-reported or attempted to be under-
8 reported, whichever is greater, to be recovered as provided in
9 subsection (e) of R.S.43:21-14, and when recovered to be paid to
10 the unemployment compensation auxiliary fund for the use of said
11 fund. For the purposes of this subsection, "knowingly" means
12 having actual knowledge of, or acting with deliberate ignorance or
13 reckless disregard for the prohibition involved.

14 (c) Any person who shall willfully violate any provision of this
15 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,
16 the violation of which is made unlawful or the observance of which
17 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
18 for which a penalty is neither prescribed herein nor provided by any
19 other applicable statute, shall be liable to a fine of \$50.00, to be
20 recovered in an action at law in the name of the Division of
21 Unemployment and Temporary Disability Insurance of the
22 Department of Labor and Workforce Development of the State of
23 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
24 fine when recovered to be paid to the unemployment compensation
25 auxiliary fund for the use of said fund; and each day such violation
26 continues shall be deemed to be a separate offense.

27 (d) (1) When it is determined by a representative or
28 representatives designated by the Director of the Division of
29 Unemployment and Temporary Disability Insurance of the
30 Department of Labor and Workforce Development of the State of
31 New Jersey that any person, whether (i) by reason of the
32 nondisclosure or misrepresentation by him or by another of a
33 material fact (whether or not such nondisclosure or
34 misrepresentation was known or fraudulent), or (ii) for any other
35 reason, has received any sum as benefits under this chapter
36 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
37 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
38 his case, or while he was disqualified from receiving benefits, or
39 while otherwise not entitled to receive such sum as benefits, such
40 person, unless the director (with the concurrence of the controller)
41 directs otherwise by regulation, shall be liable to repay those
42 benefits in full. The employer's account shall not be charged for the
43 amount of an overpayment of benefits if the overpayment was
44 caused by an error of the division and not by any error of the
45 employer. The sum shall be deducted from any future benefits
46 payable to the individual under this chapter (R.S.43:21-1 et seq.) or
47 shall be paid by the individual to the division for the unemployment
48 compensation fund, and such sum shall be collectible in the manner

1 **【provided for by law, including, but not limited to, the filing of a**
2 **certificate of debt with the Clerk of the Superior Court of New**
3 **Jersey】** as provided for by section 2 of P.L. , c. (C.) (pending
4 before the Legislature as this bill); provided, however, that, except
5 in the event of fraud, no person shall be liable for any such refunds
6 or deductions against future benefits unless so notified before four
7 years have elapsed from the time the benefits in question were paid.
8 Such person shall be promptly notified of the determination and the
9 reasons therefor. The determination shall be final unless the person
10 files an appeal of the determination within seven calendar days after
11 the delivery of the determination, or within 10 calendar days after
12 such notification was mailed to his last-known address, for any
13 determination made on or before December 1, 2010, and any initial
14 determination made pursuant to paragraph (1) of subsection (b) of
15 R.S.43:21-6 after December 1, 2010, or within 20 calendar days
16 after the delivery of such determination, or within 20 calendar days
17 after such notification was mailed to his last-known address, for any
18 determination other than an initial determination made after
19 December 1, 2010.

20 (2) Interstate and cross-offset of state and federal unemployment
21 benefits. To the extent permissible under the laws and Constitution
22 of the United States, the commissioner is authorized to enter into or
23 cooperate in arrangements or reciprocal agreements with
24 appropriate and duly authorized agencies of other states or the
25 United States Secretary of Labor, or both, whereby:

26 (A) Overpayments of unemployment benefits as determined
27 under subsection (d) of R.S.43:21-16 shall be recovered by offset
28 from unemployment benefits otherwise payable under the
29 unemployment compensation law of another state, and
30 overpayments of unemployment benefits as determined under the
31 unemployment compensation law of another state shall be
32 recovered by offset from unemployment benefits otherwise payable
33 under R.S.43:21-1 et seq.; and

34 (B) Overpayments of unemployment benefits as determined
35 under applicable federal law, with respect to benefits or allowances
36 for unemployment provided under a federal program administered
37 by this State under an agreement with the United States Secretary of
38 Labor, shall be recovered by offset from unemployment benefits
39 otherwise payable under R.S.43:21-1 et seq., or any federal program
40 administered by this State, or under the unemployment
41 compensation law of another state or any federal unemployment
42 benefit or allowance program administered by another state under
43 an agreement with the United States Secretary of Labor, if the other
44 state has in effect a reciprocal agreement with the United States
45 Secretary of Labor as authorized by subsection (g) of 42 U.S.C.
46 s.503, and if the United States agrees, as provided in the reciprocal
47 agreement with this State entered into under subsection (g) of 42
48 U.S.C. s.503, that overpayments of unemployment benefits as

1 determined under subsection (d) of R.S.43:21-16 and overpayments
2 as determined under the unemployment compensation law of
3 another state which has in effect a reciprocal agreement with the
4 United States Secretary of Labor as authorized by subsection (g) of
5 42 U.S.C. s.503, shall be recovered by offset from benefits or
6 allowances otherwise payable under a federal program administered
7 by this State or another state under an agreement with the United
8 States Secretary of Labor.

9 (e) (1) Any employing unit, or any officer or agent of an
10 employing unit, which officer or agent is directly or indirectly
11 responsible for collecting, truthfully accounting for, remitting when
12 payable any contribution, or filing or causing to be filed any report
13 or statement required by this chapter, or employer, or person failing
14 to remit, when payable, any employer contributions, or worker
15 contributions (if withheld or deducted), or the amount of such
16 worker contributions (if not withheld or deducted), or filing or
17 causing to be filed with the controller or the Division of
18 Unemployment and Temporary Disability Insurance of the
19 Department of Labor and Workforce Development of the State of
20 New Jersey, any false or fraudulent report or statement, and any
21 person who aids or abets an employing unit, employer, or any
22 person in the preparation or filing of any false or fraudulent report
23 or statement with intent to defraud the State of New Jersey or an
24 employment security agency of any other state or of the federal
25 government, or with intent to evade the payment of any
26 contributions, interest or penalties, or any part thereof, which shall
27 be due under the provisions of this chapter (R.S.43:21-1 et seq.),
28 shall be liable for each offense upon conviction before any Superior
29 Court or municipal court, to a fine not to exceed \$1,000.00 or by
30 imprisonment for a term not to exceed 90 days, or both, at the
31 discretion of the court. The fine upon conviction shall be payable to
32 the unemployment compensation auxiliary fund. Any penalties
33 imposed by this subsection shall be in addition to those otherwise
34 prescribed in this chapter (R.S.43:21-1 et seq.).

35 (2) Any employing unit, officer or agent of the employing unit,
36 or any other person, who knowingly violates, or attempts to violate,
37 or advise another person to violate the transfer of employment
38 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
39 conviction before any Superior Court or municipal court, guilty of a
40 crime of the fourth degree. For the purposes of this subsection,
41 "knowingly" means having actual knowledge of, or acting with
42 deliberate ignorance or reckless disregard for the prohibition
43 involved.

44 (f) Any employing unit or any officer or agent of an employing
45 unit or any other person who aids and abets any person to obtain
46 any sum of benefits under this chapter to which he is not entitled, or
47 a larger amount as benefits than that to which he is justly entitled,
48 shall be liable for each offense upon conviction before any Superior

1 Court or municipal court, to a fine not to exceed \$1,000.00 or by
2 imprisonment for a term not to exceed 90 days, or both, at the
3 discretion of the court. The fine upon conviction shall be payable to
4 the unemployment compensation auxiliary fund. Any penalties
5 imposed by this subsection shall be in addition to those otherwise
6 prescribed in this chapter (R.S.43:21-1 et seq.).

7 (g) There shall be created in the Division of Unemployment and
8 Temporary Disability Insurance of the Department of Labor and
9 Workforce Development of the State of New Jersey an investigative
10 staff for the purpose of investigating violations referred to in this
11 section and enforcing the provisions thereof.

12 (h) An employing unit or any officer or agent of an employing
13 unit who makes a false statement or representation, knowing it to be
14 false, or who knowingly fails to disclose a material fact, to reduce
15 benefit charges to the employing unit pursuant to paragraph (1) of
16 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
17 be recovered in an action at law in the name of the Division of
18 Unemployment and Temporary Disability Insurance of the
19 Department of Labor and Workforce Development of the State of
20 New Jersey or as provided in subsection (e) of R.S.43:21-14. The
21 fine when recovered shall be paid to the unemployment
22 compensation auxiliary fund for the use of the fund. Each false
23 statement or representation or failure to disclose a material fact, and
24 each day of that failure or refusal shall constitute a separate offense.
25 Any penalties imposed by this subsection shall be in addition to
26 those otherwise prescribed in R.S.43:21-1 et seq.

27 (i) The Department of Labor and Workforce Development shall
28 arrange for the electronic receipt of death record notifications from
29 the New Jersey Electronic Death Registration System, pursuant to
30 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a
31 verification system to confirm that benefits paid pursuant to the
32 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
33 et al.), and the "unemployment compensation law," R.S.43:21-1 et
34 seq., are not being paid to deceased individuals.

35 (j) The Department of Labor and Workforce Development shall
36 arrange for the electronic receipt of identifying information from
37 the Department of Corrections, pursuant to section 6 of P.L.1976,
38 c.98 (C.30:1B-6), and from the Administrative Office of the Courts
39 and any county which does not provide county inmate incarceration
40 information to the Administrative Office of the Courts, and
41 establish a verification system to confirm that benefits paid
42 pursuant to the "unemployment compensation law," R.S.43:21-1 et
43 seq., are not being paid to individuals who are incarcerated.
44 (cf: P.L.2013, c.274, s.5)

45
46 2. (New section) The Department of Labor and Workforce
47 Development shall file a notice of debt with the Department of the
48 Treasury upon the failure of any individual debtor to pay any debt

1 related to an overpayment owed to the State pursuant to subsection
2 (d) of R.S.43:21-16. The Department of the Treasury shall issue a
3 certificate of debt pursuant to section 1 of P.L.2005, c.124
4 (C.2A:16-11.1) and pursue the collection of the debt pursuant to
5 P.L.2005, c.124 (C.2A:16-11.1 et al.) including filing a wage
6 execution with the Office of Administrative Law pursuant to
7 subsection b. of N.J.S.2A:17-50. The notice of debt shall only be
8 filed 120 days subsequent to the date the individual debtor has no
9 appeal or appeal period pending pursuant to subsection (d) of
10 R.S.43:21-16.

11

12 3. N.J.S.2A:17-50 is amended to read as follows:

13 2A:17-50. a. When a judgment has been recovered in the
14 Superior Court, and where any wages, debts, earnings, salary,
15 income from trust funds, or profits are due and owing to the
16 judgment debtor, or thereafter become due and owing to him, to the
17 amount of \$48.00 or more a week, the judgment creditor may, on
18 notice to the judgment debtor unless the court otherwise orders,
19 apply to the court in which the judgment was recovered, or to the
20 court having jurisdiction of the same, and upon satisfactory proofs,
21 by affidavit or otherwise, of such facts, the court shall grant an
22 order directing that an execution issue against the wages, debts,
23 earnings, salary, income from trust funds, or profits of the judgment
24 debtor.

25 b. Notwithstanding the provisions of subsection a. or any other
26 law to the contrary, when a wage execution application is filed by
27 the State arising out of a determination by a State department or
28 agency that a person owes the department or agency a debt as
29 defined in section 1 of P.L.2005, c.124 (C.2A:16-11.1) or section 2
30 of P.L. , c. (C.) (pending before the Legislature as this act),
31 such application may be filed with the Office of Administrative
32 Law rather than with the Superior Court.
33 (cf: P.L.2005, c.124, s.7)

34

35 4. This act shall take effect on the 90th day after enactment;
36 however, the Commissioner of Labor and Workforce Development
37 may take such anticipatory administrative action as it deems
38 necessary to implement this program.

39

40

41 STATEMENT

42

43 This bill requires the Department of the Treasury to collect
44 overpayments of unemployment insurance benefits. The bill directs
45 the Department of Labor and Workforce Development to file a
46 notice of debt with the Department of the Treasury upon the failure
47 of an individual debtor to pay a debt incurred due to overpayment
48 of unemployment benefits to the debtor and owed to the State.

1 The bill provides that the Department of the Treasury must issue
2 a certificate of debt and pursue the collection of the debt from the
3 individual. The bill empowers the Department of the Treasury to
4 file an application with the Office of Administrative Law for wage
5 garnishment of an individual who has failed to reimburse the
6 Department of Labor and Workforce Development for an
7 overpayment of UI benefits within 120 days of the date that all
8 appeals for that payment have been exhausted.

9 The amount of garnishment is determined by the Department of
10 Labor and Workforce Development and may not exceed 25 percent
11 of the debtor's gross earnings, provided that after the garnishment,
12 the debtor's income will not be less than 250 percent of the poverty
13 level for the individual, taking into account the size of the
14 individual's family.

15 The bill takes effect on the 90th date after enactment, but permits
16 the Commissioner of Labor and Workforce Development to take
17 anticipatory administrative actions prior to the bill's effective date.