

ASSEMBLY, No. 3867

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Concerns repayment of unemployment compensation overpayments.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning overpayment of certain unemployment
2 compensation and amending R.S.43:21-16.

3

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

6

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

8 43:21-16. (a) (1) Whoever makes a false statement or
9 representation, knowing it to be false, or knowingly fails to disclose
10 a material fact, to obtain or increase or attempts to obtain or
11 increase any benefit or other payment under this chapter
12 (R.S.43:21-1 et seq.), or under an employment security law of any
13 other state or of the federal government, either for himself or for
14 any other person, shall be liable to a fine of 25% of the amount
15 fraudulently obtained, to be recovered in an action at law in the
16 name of the Division of Unemployment and Temporary Disability
17 Insurance of the Department of Labor and Workforce Development
18 of the State of New Jersey or as provided in subsection (e) of
19 R.S.43:21-14, said fine when recovered shall be immediately
20 deposited in the following manner: 10 percent of the amount
21 fraudulently obtained deposited into the unemployment
22 compensation auxiliary fund for the use of said fund, and 15 percent
23 of the amount fraudulently obtained deposited into the
24 unemployment compensation fund; and each such false statement or
25 representation or failure to disclose a material fact shall constitute a
26 separate offense. Any penalties imposed by this subsection shall be
27 in addition to those otherwise prescribed in this chapter (R.S.43:21-
28 1 et seq.).

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

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

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

41 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
42 2294;

43 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
44 5177(a);

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

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

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

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

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

46 (3) Any employing unit, officer or agent of the employing unit,
47 or any other person, determined by the controller to have knowingly
48 violated, or attempted to violate, or advised another person to

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

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

26 (d) (1) When it is determined by a representative or
27 representatives designated by the Director of the Division of
28 Unemployment and Temporary Disability Insurance of the
29 Department of Labor and Workforce Development of the State of
30 New Jersey that any person, **【whether (i)】** by reason of the
31 fraudulent or knowing nondisclosure or misrepresentation by him or
32 by another of a material fact **【(whether or not such nondisclosure or**
33 **misrepresentation was known or fraudulent), or (ii) for any other**
34 **reason】**, has received any sum as benefits under this chapter
35 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
36 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
37 his case, or while he was disqualified from receiving benefits, or
38 while otherwise not entitled to receive such sum as benefits, such
39 person, unless the director (with the concurrence of the controller)
40 directs otherwise by regulation, shall be liable to repay those
41 benefits in full. If the representative finds that the person received
42 the overpayment of benefits for any reason other than fraudulent or
43 knowing nondisclosure or misrepresentation, the person shall, or
44 shall not, be liable to repay all or any portion of the overpayment
45 which occurred before the finding of the overpayment as follows:
46 (i) if the person is notified of the overpayment not later than the
47 90th calendar day after the overpayment commences, the person
48 shall be liable to repay 100% of the amount overpaid; (ii) if the

1 person is notified of the overpayment during the period from the
2 91st calendar day through the 180th calendar day after the
3 overpayment commences, the person shall be liable to repay 65% of
4 the amount overpaid; (iii) if the person is notified of the
5 overpayment during the period from the 181st calendar day through
6 the 365th calendar day after the overpayment commences, the
7 person shall be liable to repay 35% of the amount overpaid; and (iv)
8 if the person is notified of the overpayment after the 365th calendar
9 day after the overpayment commences, the person shall not be
10 liable to repay any of the amount overpaid. The employer's account
11 shall not be charged for the amount of an overpayment of benefits if
12 the overpayment was caused by an error of the division and not by
13 any error of the employer. The sum shall be deducted from any
14 future benefits payable to the individual under this chapter
15 (R.S.43:21-1 et seq.) or shall be paid by the individual to the
16 division for the unemployment compensation fund, and such sum
17 shall be collectible in the manner provided for by law, including,
18 but not limited to, the filing of a certificate of debt with the Clerk of
19 the Superior Court of New Jersey; provided, however, that, except
20 in the event of fraud, no person shall be liable for any such refunds
21 or deductions against future benefits unless so notified before four
22 years have elapsed from the time the benefits in question were paid.
23 Such person shall be promptly notified of the determination and the
24 reasons therefor. The determination shall be final unless the person
25 files an appeal of the determination within seven calendar days after
26 the delivery of the determination, or within 10 calendar days after
27 such notification was mailed to his last-known address, for any
28 determination made on or before December 1, 2010, and any initial
29 determination made pursuant to paragraph (1) of subsection (b) of
30 R.S.43:21-6 after December 1, 2010, or within 20 calendar days
31 after the delivery of such determination, or within 20 calendar days
32 after such notification was mailed to his last-known address, for any
33 determination other than an initial determination made after
34 December 1, 2010.

35 (2) Interstate and cross-offset of state and federal unemployment
36 benefits. To the extent permissible under the laws and Constitution
37 of the United States, the commissioner is authorized to enter into or
38 cooperate in arrangements or reciprocal agreements with
39 appropriate and duly authorized agencies of other states or the
40 United States Secretary of Labor, or both, whereby:

41 (A) Overpayments of unemployment benefits as determined
42 under subsection (d) of R.S.43:21-16 shall be recovered by offset
43 from unemployment benefits otherwise payable under the
44 unemployment compensation law of another state, and
45 overpayments of unemployment benefits as determined under the
46 unemployment compensation law of another state shall be
47 recovered by offset from unemployment benefits otherwise payable
48 under R.S.43:21-1 et seq.; and

1 (B) Overpayments of unemployment benefits as determined
2 under applicable federal law, with respect to benefits or allowances
3 for unemployment provided under a federal program administered
4 by this State under an agreement with the United States Secretary of
5 Labor, shall be recovered by offset from unemployment benefits
6 otherwise payable under R.S.43:21-1 et seq., or any federal program
7 administered by this State, or under the unemployment
8 compensation law of another state or any federal unemployment
9 benefit or allowance program administered by another state under
10 an agreement with the United States Secretary of Labor, if the other
11 state has in effect a reciprocal agreement with the United States
12 Secretary of Labor as authorized by subsection (g) of 42
13 U.S.C.s.503, and if the United States agrees, as provided in the
14 reciprocal agreement with this State entered into under subsection
15 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits
16 as determined under subsection (d) of R.S.43:21-16 and
17 overpayments as determined under the unemployment
18 compensation law of another state which has in effect a reciprocal
19 agreement with the United States Secretary of Labor as authorized
20 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset
21 from benefits or allowances otherwise payable under a federal
22 program administered by this State or another state under an
23 agreement with the United States Secretary of Labor.

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

1 imposed by this subsection shall be in addition to those otherwise
2 prescribed in this chapter (R.S.43:21-1 et seq.).

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

12 (f) Any employing unit or any officer or agent of an employing
13 unit or any other person who aids and abets any person to obtain
14 any sum of benefits under this chapter to which he is not entitled, or
15 a larger amount as benefits than that to which he is justly entitled,
16 shall be liable for each offense upon conviction before any Superior
17 Court or municipal court, to a fine not to exceed \$1,000.00 or by
18 imprisonment for a term not to exceed 90 days, or both, at the
19 discretion of the court. The fine upon conviction shall be payable to
20 the unemployment compensation auxiliary fund. Any penalties
21 imposed by this subsection shall be in addition to those otherwise
22 prescribed in this chapter (R.S.43:21-1 et seq.).

23 (g) There shall be created in the Division of Unemployment and
24 Temporary Disability Insurance of the Department of Labor and
25 Workforce Development of the State of New Jersey an investigative
26 staff for the purpose of investigating violations referred to in this
27 section and enforcing the provisions thereof.

28 (h) An employing unit or any officer or agent of an employing
29 unit who makes a false statement or representation, knowing it to be
30 false, or who knowingly fails to disclose a material fact, to reduce
31 benefit charges to the employing unit pursuant to paragraph (1) of
32 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
33 be recovered in an action at law in the name of the Division of
34 Unemployment and Temporary Disability Insurance of the
35 Department of Labor and Workforce Development of the State of
36 New Jersey or as provided in subsection (e) of R.S.43:21-14. The
37 fine when recovered shall be paid to the unemployment
38 compensation auxiliary fund for the use of the fund. Each false
39 statement or representation or failure to disclose a material fact, and
40 each day of that failure or refusal shall constitute a separate offense.
41 Any penalties imposed by this subsection shall be in addition to
42 those otherwise prescribed in R.S.43:21-1 et seq.

43 (i) The Department of Labor and Workforce Development shall
44 arrange for the electronic receipt of death record notifications from
45 the New Jersey Electronic Death Registration System, pursuant to
46 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a
47 verification system to confirm that benefits paid pursuant to the
48 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25

1 et al.), and the "unemployment compensation law," R.S.43:21-1 et
2 seq., are not being paid to deceased individuals.

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

13
14 2. This act shall take effect immediately.
15
16

17 STATEMENT

18
19 This bill provides that if a representative of the Department of
20 Labor and Workforce Development finds that a person received an
21 overpayment of unemployment benefits for any reason other than
22 fraudulent or knowing nondisclosure or misrepresentation, the
23 person shall, or shall not, be liable for all or a portion of the amount
24 of any overpayment which occurred before the finding of the
25 overpayment as follows:

26 1. If the person is notified of the overpayment not later than the
27 90th calendar day after the overpayment commences, the person
28 shall be liable to repay 100% of the amount overpaid;

29 2. If the person is notified of the overpayment during the
30 period from the 91st calendar day through the 180th calendar day
31 after the overpayment commences, the person shall be liable to
32 repay 65% of the amount overpaid;

33 3. If the person is notified of the overpayment during the
34 period from the 181st calendar day through the 365th calendar day
35 after the overpayment commences, the person shall be liable to
36 repay 35% of the amount overpaid; and

37 4. If the person is notified of the overpayment after the 365th
38 calendar day after the overpayment commences, the person shall not
39 be liable to repay any of the amount overpaid.

40 The bill provides protection from excessive repayment burdens
41 to persons who receive overpayments of unemployment benefits
42 through no fault of their own, especially in cases in which
43 employers or their authorized agents fail to submit information
44 required under the unemployment compensation law and then
45 appeal only after a benefit determination is made, sometimes
46 delaying action for a full year or more after benefit payments
47 commence.