

ASSEMBLY, No. 3414

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Assemblyman GERARD SCHARFENBERGER, PHD

District 13 (Monmouth)

SYNOPSIS

Concerns repayment of unemployment insurance benefits obtained fraudulently.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unemployment insurance fraud and amending
2 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 \$250 for each
15 offense, or 50% of the amount fraudulently obtained, whichever is
16 greater, to be recovered in an action at law in the name of the
17 Division of Unemployment and Temporary Disability Insurance of
18 the Department of Labor and Workforce Development of the State
19 of New Jersey or as provided in subsection (e) of R.S.43:21-14, said
20 fine when recovered shall be immediately deposited in the
21 following manner: 10 percent of the amount fraudulently obtained
22 deposited into the unemployment compensation auxiliary fund for
23 the use of said fund, and 15 percent of the amount fraudulently
24 obtained deposited into the unemployment compensation fund; and
25 each such false statement or representation or failure to disclose a
26 material fact shall constitute a separate offense. Any penalties
27 imposed by this subsection shall be in addition to those otherwise
28 prescribed in this chapter (R.S.43:21-1 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]** \$250, or
20 **[25%]** 50% of the amount fraudulently withheld, whichever is
21 greater, to be recovered in an action at law in the name of the
22 Division of Unemployment and Temporary Disability Insurance of
23 the Department of Labor and Workforce Development of the State
24 of 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]** \$25 for the first report not submitted within 10 days after
36 the mailing of a request for such report, and an additional **[\$25.00]**
37 \$25 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%】** 50% of the contributions under-reported or attempted to be
7 under-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】** \$50, to
19 be 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 nondisclosure or misrepresentation by him or by another of a
32 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, and any person who receives such benefits by
42 reason of a known or fraudulent nondisclosure or misrepresentation
43 by him of a material fact, shall be liable to repay those benefits in
44 full prior to collecting any future benefits payable to that person
45 under this chapter (R.S.43:21-1 et seq.). The employer's account
46 shall not be charged for the amount of an overpayment of benefits if
47 the overpayment was caused by an error of the division and not by
48 any error of the employer. The sum shall be deducted from any

1 future benefits payable to the individual under this chapter
2 (R.S.43:21-1 et seq.) or shall be paid by the individual to the
3 division for the unemployment compensation fund, and such sum
4 shall be collectible in the manner provided for by law, including,
5 but not limited to, the filing of a certificate of debt with the Clerk of
6 the Superior Court of New Jersey, unless the individual received
7 benefits by reason of a known or fraudulent nondisclosure or
8 misrepresentation by him of a material fact, in which case, the sum
9 shall be repaid to the division prior to collecting any future benefits
10 payable to the individual under this chapter (R.S.43:21-1 et seq.);
11 provided, however, that, except in the event of fraud, no person
12 shall be liable for any such refunds or deductions against future
13 benefits unless so notified before four years have elapsed from the
14 time the benefits in question were paid. Such person shall be
15 promptly notified of the determination and the reasons therefor. The
16 determination shall be final unless the person files an appeal of the
17 determination within seven calendar days after the delivery of the
18 determination, or within 10 calendar days after such notification
19 was mailed to his last-known address, for any determination made
20 on or before December 1, 2010, and any initial determination made
21 pursuant to paragraph (1) of subsection (b) of R.S.43:21-6 after
22 December 1, 2010, or within 20 calendar days after the delivery of
23 such determination, or within 20 calendar days after such
24 notification was mailed to his last-known address, for any
25 determination other than an initial determination made after
26 December 1, 2010.

27 (2) Interstate and cross-offset of state and federal unemployment
28 benefits. To the extent permissible under the laws and Constitution
29 of the United States, the commissioner is authorized to enter into or
30 cooperate in arrangements or reciprocal agreements with
31 appropriate and duly authorized agencies of other states or the
32 United States Secretary of Labor, or both, whereby:

33 (A) Overpayments of unemployment benefits as determined
34 under subsection (d) of R.S.43:21-16 shall be recovered by offset
35 from unemployment benefits otherwise payable under the
36 unemployment compensation law of another state, and
37 overpayments of unemployment benefits as determined under the
38 unemployment compensation law of another state shall be
39 recovered by offset from unemployment benefits otherwise payable
40 under R.S.43:21-1 et seq.; and

41 (B) Overpayments of unemployment benefits as determined
42 under applicable federal law, with respect to benefits or allowances
43 for unemployment provided under a federal program administered
44 by this State under an agreement with the United States Secretary of
45 Labor, shall be recovered by offset from unemployment benefits
46 otherwise payable under R.S.43:21-1 et seq., or any federal program
47 administered by this State, or under the unemployment
48 compensation law of another state or any federal unemployment

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

16 (e) (1) Any employing unit, or any officer or agent of an
17 employing unit, which officer or agent is directly or indirectly
18 responsible for collecting, truthfully accounting for, remitting when
19 payable any contribution, or filing or causing to be filed any report
20 or statement required by this chapter, or employer, or person failing
21 to remit, when payable, any employer contributions, or worker
22 contributions (if withheld or deducted), or the amount of such
23 worker contributions (if not withheld or deducted), or filing or
24 causing to be filed with the controller or the Division of
25 Unemployment and Temporary Disability Insurance of the
26 Department of Labor and Workforce Development of the State of
27 New Jersey, any false or fraudulent report or statement, and any
28 person who aids or abets an employing unit, employer, or any
29 person in the preparation or filing of any false or fraudulent report
30 or statement with intent to defraud the State of New Jersey or an
31 employment security agency of any other state or of the federal
32 government, or with intent to evade the payment of any
33 contributions, interest or penalties, or any part thereof, which shall
34 be due under the provisions of this chapter (R.S.43:21-1 et seq.),
35 shall be liable for each offense upon conviction before any Superior
36 Court or municipal court, to a fine not to exceed **[\$1,000.00]**
37 \$1,000 or by imprisonment for a term not to exceed 90 days, or
38 both, at the discretion of the court. The fine upon conviction shall
39 be payable to the unemployment compensation auxiliary fund. Any
40 penalties imposed by this subsection shall be in addition to those
41 otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

42 (2) Any employing unit, officer or agent of the employing unit,
43 or any other person, who knowingly violates, or attempts to violate,
44 or advise another person to violate the transfer of employment
45 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
46 conviction before any Superior Court or municipal court, guilty of a
47 crime of the fourth degree. For the purposes of this subsection,
48 "knowingly" means having actual knowledge of, or acting with

1 deliberate ignorance or reckless disregard for the prohibition
2 involved.

3 (f) Any employing unit or any officer or agent of an employing
4 unit or any other person who aids and abets any person to obtain
5 any sum of benefits under this chapter to which he is not entitled, or
6 a larger amount as benefits than that to which he is justly entitled,
7 shall be liable for each offense upon conviction before any Superior
8 Court or municipal court, to a fine not to exceed **[\$1,000.00]**
9 \$1,000 or by imprisonment for a term not to exceed 90 days, or
10 both, at the discretion of the court. The fine upon conviction shall
11 be payable to the unemployment compensation auxiliary fund. Any
12 penalties imposed by this subsection shall be in addition to those
13 otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

14 (g) There shall be created in the Division of Unemployment and
15 Temporary Disability Insurance of the Department of Labor and
16 Workforce Development of the State of New Jersey an investigative
17 staff for the purpose of investigating violations referred to in this
18 section and enforcing the provisions thereof.

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

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

42 (j) The Department of Labor and Workforce Development shall
43 arrange for the electronic receipt of identifying information from
44 the Department of Corrections, pursuant to section 6 of
45 P.L.1976, c.98 (C.30:1B-6), and from the Administrative Office of
46 the Courts and any county which does not provide county inmate
47 incarceration information to the Administrative Office of the
48 Courts, and establish a verification system to confirm that benefits

1 paid pursuant to the "unemployment compensation law," R.S.43:21 -
2 1 et seq., are not being paid to individuals who are incarcerated.
3 (cf: P.L.2013, c.274, s.5)
4

5 2. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 This bill provides that any person who receives unemployment
11 insurance benefits by reason of a known or fraudulent nondisclosure
12 or misrepresentation of a material fact shall be liable to repay those
13 benefits in full prior to collecting any future benefits payable to that
14 person under the New Jersey "unemployment compensation law,"
15 R.S.43:21-1 et seq. Currently, individuals guilty of unemployment
16 insurance fraud may be allowed to collect benefits before they have
17 repaid in full the amount they fraudulently obtained.

18 The bill increases the fine for fraudulently obtaining benefits to
19 \$250 for each offense, or 50 percent of the amount fraudulently
20 obtained, whichever is greater. Currently, this fine is 25 percent of
21 the amount fraudulently obtained, whichever is greater. The bill
22 also increases the fine for employers that fraudulently prevent or
23 reduce the payment of unemployment insurance benefits to
24 employees, or fraudulently obtain a lower rate of contribution to the
25 unemployment insurance compensation trust fund to \$250 or 50
26 percent of the amount withheld or under-reported, whichever is
27 greater.