

ASSEMBLY, No. 1453

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Assemblyman IMPREVEDUTO and Assemblywoman
QUIGLEY

1 AN ACT concerning certain unemployment compensation offenses and
2 penalties 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:

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

8 43:21-16. (a) Whoever makes a false statement or representation,
9 knowing it to be false, or knowingly fails to disclose a material fact,
10 to obtain or increase or attempts to obtain or increase any benefit or
11 other payment under this chapter (R.S.43:21-1 et seq.), or under an
12 employment security law of any other state or of the federal
13 government, either for himself or for any other person, shall be liable
14 to a fine of ~~[\$20.00]~~ \$40 for each offense, or ~~[25%]~~ 50% of the
15 amount fraudulently obtained, whichever is greater, to be recovered in
16 an action at law in the name of the Division of Unemployment and
17 Temporary Disability Insurance of the Department of Labor of the
18 State of New Jersey or as provided in subsection (e) of R.S.43:21-14,
19 said fine when recovered to be paid to the unemployment
20 compensation auxiliary fund for the use of said fund;~~[and each such]~~
21 except that, in the discretion of the trier of fact, up to 50% of the fine
22 may be awarded to any person who provides evidence or information
23 material to the successful prosecution of the action. Each false
24 statement or representation or failure to disclose a material fact shall
25 constitute a separate offense. Any penalties imposed by this
26 subsection shall be in addition to those otherwise prescribed in this
27 chapter (R.S.43:21-1 et seq.).

28 (b) (1) An employing unit or any officer or agent of an employing
29 unit or any other person who makes a false statement or
30 representation, knowing it to be false, or who knowingly fails to
31 disclose a material fact, to prevent or reduce the payment of benefits
32 to any individual entitled thereto or to avoid becoming or remaining
33 subject hereto or to avoid or reduce any contribution or other payment

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 required from an employing unit under this chapter (R.S.43:21-1 et
2 seq.), or under an employment security law of any other state or of the
3 federal government, or who willfully fails or refuses to furnish any
4 reports required hereunder (except for such reports as may be required
5 under subsection (b) of R.S.43:21-6) or to produce or permit the
6 inspection or copying of records, as required hereunder, shall be liable
7 to a fine of [~~\$100.00~~] \$100, to be recovered in an action at law in the
8 name of the Division of Unemployment and Temporary Disability
9 Insurance of the Department of Labor of the State of New Jersey or
10 as provided in subsection (e) of R.S.43:21-14, said fine when
11 recovered to be paid to the unemployment compensation auxiliary fund
12 for the use of said fund; and each such false statement or
13 representation or failure to disclose a material fact, and each day of
14 such failure or refusal shall constitute a separate offense. Any penalties
15 imposed by this paragraph shall be in addition to those otherwise
16 prescribed in this chapter (R.S.43:21-1 et seq.).

17 (2) Any employing unit or any officer or agent of an employing
18 unit or any other person who fails to submit any report required under
19 subsection (b) of R.S.43:21-6 shall be subject to a penalty of [~~\$25.00~~]
20 \$25 for the first report not submitted within 10 days after the mailing
21 of a request for such report, and an additional [~~\$25.00~~] \$25 penalty
22 may be assessed for the next 10-day period, which may elapse after the
23 end of the initial 10-day period and before the report is filed; provided
24 that when such report or reports are not filed within the prescribed
25 time but it is shown to the satisfaction of the director that the failure
26 was due to a reasonable cause, no such penalty shall be imposed. Any
27 penalties imposed by this paragraph shall be recovered as provided in
28 subsection (e) of R.S.43:21-14, and when recovered shall be paid to
29 the unemployment compensation auxiliary fund for the use of said
30 fund.

31 (c) Any person who shall willfully violate any provision of this
32 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder, the
33 violation of which is made unlawful or the observance of which is
34 required under the terms of this chapter (R.S.43:21-1 et seq.), and for
35 which a penalty is neither prescribed herein nor provided by any other
36 applicable statute, shall be liable to a fine of [~~\$50.00~~] \$50, to be
37 recovered in an action at law in the name of the Division of
38 Unemployment and Temporary Disability Insurance of the Department
39 of Labor of the State of New Jersey or as provided in subsection (e)
40 of R.S.43:21-14, said fine when recovered to be paid to the
41 unemployment compensation auxiliary fund for the use of said fund;
42 and each day such violation continues shall be deemed to be a separate
43 offense.

44 (d) (1) When it is determined by a representative or representatives
45 designated by the Director of the Division of Unemployment and
46 Temporary Disability Insurance of the Department of Labor of the

1 State of New Jersey that any person, whether (I) by reason of the
2 nondisclosure or misrepresentation by him or by another of a material
3 fact (whether or not such nondisclosure or misrepresentation was
4 known or fraudulent), or (ii) for any other reason, has received any
5 sum as benefits under this chapter (R.S.43:21-1 et seq.) while any
6 conditions for the receipt of benefits imposed by this chapter
7 (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was
8 disqualified from receiving benefits, or while otherwise not entitled to
9 receive such sum as benefits, such person, unless the director (with the
10 concurrence of the controller) directs otherwise by regulation, shall be
11 liable to repay those benefits in full. The sum shall be deducted from
12 any future benefits payable to the individual under this chapter
13 (R.S.43:21-1 et seq.) or shall be paid by the individual to the division
14 for the unemployment compensation fund, and such sum shall be
15 collectible in the manner provided for by law, including, but not
16 limited to, the filing of a certificate of debt with the Clerk of the
17 Superior Court of New Jersey; provided, however, that, except in the
18 event of fraud, no person shall be liable for any such refunds or
19 deductions against future benefits unless so notified before four years
20 have elapsed from the time the benefits in question were paid. Such
21 person shall be promptly notified of the determination and the reasons
22 therefor. Unless such person, within seven calendar days after the
23 delivery of such determination, or within 10 calendar days after such
24 notification was mailed to his last-known address, files an appeal from
25 such determination, such determination shall be final.

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

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

39 and

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

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

16 (e) Any employing unit, or any officer or agent of an employing
17 unit, which officer or agent is directly or indirectly responsible for
18 collecting, truthfully accounting for, remitting when payable any
19 contribution, or filing or causing to be filed any report or statement
20 required by this chapter, or employer, or person failing to remit, when
21 payable, any employer contributions, or worker contributions (if
22 withheld or deducted), or the amount of such worker contributions (if
23 not withheld or deducted), or filing or causing to be filed with the
24 controller or the Division of Unemployment and Temporary Disability
25 Insurance of the Department of Labor of the State of New Jersey, any
26 false or fraudulent report or statement, and any person who aids or
27 abets an employing unit, employer, or any person in the preparation or
28 filing of any false or fraudulent report or statement with intent to
29 defraud the State of New Jersey or an employment security agency of
30 any other state or of the federal government, or with intent to evade
31 the payment of any contributions, interest or penalties, or any part
32 thereof, which shall be due under the provisions of this chapter
33 (R.S.43:21-1 et seq.), shall be liable for each offense upon conviction
34 before any Superior Court or municipal court, to a fine not to exceed
35 ~~[\$1,000.00]~~ \$2,000 or by imprisonment for a term not to exceed 90
36 days, or both, at the discretion of the court. The fine upon conviction
37 shall be payable to the unemployment compensation auxiliary fund,
38 except that, in the discretion of the court, up to 50% of the fine may
39 be awarded to any person who provides evidence or information
40 material to the successful prosecution of the action. Any penalties
41 imposed by this subsection shall be in addition to those otherwise
42 prescribed in this chapter (R.S.43:21-1 et seq.).

43 (f) Any employing unit or any officer or agent of an employing unit
44 or any other person who aids and abets any person to obtain any sum
45 of benefits under this chapter to which he is not entitled, or a larger
46 amount as benefits than that to which he is justly entitled, shall be

1 liable for each offense upon conviction before any Superior Court or
2 municipal court, to a fine not to exceed ~~[\$1,000.00]~~ \$2,000 or by
3 imprisonment for a term not to exceed 90 days, or both, at the
4 discretion of the court. The fine upon conviction shall be payable to
5 the unemployment compensation auxiliary fund, except that, in the
6 discretion of the court, up to 50% of the fine may be awarded to any
7 person who provides evidence or information material to the
8 successful prosecution of the action. Any penalties imposed by this
9 subsection shall be in addition to those otherwise prescribed in this
10 chapter (R.S.43:21-1 et seq.).

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

16 (cf: P.L.1991, c.357, s.1)

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18 2. This act shall take effect immediately.

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STATEMENT

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23 This bill doubles certain fines and penalties under the
24 “unemployment compensation law” and allows for the awarding of up
25 to 50% of the increased fine amount to any person who provides
26 information or evidence material to the successful prosecution of the
27 action. In this way, a “whistle blower” can be rewarded for his action,
28 without reducing revenues to the State’s unemployment compensation
29 auxiliary fund.

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34 Doubles certain fines under unemployment compensation law and
35 permits award of up to one-half of amount to “whistle blower.”