

CHAPTER 167
(CORRECTED COPY OF CORRECTED COPY)

AN ACT concerning employee misclassification and insurance fraud and amending various parts of the statutory law.

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

1. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to read as follows:

C.17:33A-3 Definitions.

3. As used in this act:

"Attorney General" means the Attorney General of New Jersey or his designated representatives.

"Bureau" means the Bureau of Fraud Deterrence established by section 8 of P.L.1983, c.320 (C.17:33A-8).

"Commissioner" means the Commissioner of Banking and Insurance.

"Hospital" means any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care.

"Insurance company" means:

- a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.);

- b. Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

- c. Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

- d. Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.);

- e. Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.);

- f. Any dental plan organization operating pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.);

- g. Any insurance plan operating pursuant to P.L.1970, c.215 (C.17:29D-1);

- h. The New Jersey Insurance Underwriting Association operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

- i. (Deleted by amendment, P.L.2010, c.32)

- j. Any risk retention group or purchasing group operating pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C.s.3901 et seq.; and

- k. Any health maintenance organization operating pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

"Pattern" means five or more related violations of P.L.1983, c.320 (C.17:33A-1 et seq.). Violations are related if they involve either the same victim, or same or similar actions on the part of the person or practitioner charged with violating P.L.1983, c.320 (C.17:33A-1 et seq.).

"Person" means a person as defined in R.S.1:1-2, and shall include, unless the context otherwise requires, a practitioner.

"Principal residence" means that residence at which a person spends the majority of his time. Principal residence may be an abode separate and distinct from a person's domicile. Mere seasonal or weekend residence within this State does not constitute principal residence within this State.

"Practitioner" means a licensee of this State authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of this State whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

"Producer" means an insurance producer as defined in section 3 of P.L.2001, c.210 (C.17:22A-28), licensed to transact the business of insurance in this State pursuant to the provisions of the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

"Statement" includes, but is not limited to, any application, writing, notice, expression, statement, proof of loss, bill of lading, receipt, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X-ray, test result or other evidence of loss, injury or expense.

2. Section 4 of P.L.1983, c.320 (C.17:33A-4) is amended to read as follows:

C.17:33A-4 Violations.

4. a. A person or a practitioner violates this act if he:

(1) Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company, the Unsatisfied Claim and Judgment Fund, or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(3) Conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled;

(4) Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining:

(a) a motor vehicle insurance policy, that the person to be insured maintains a principal residence in this State when, in fact, that person's principal residence is in a state other than this State; or

(b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract;

(5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions of paragraph (4) of this subsection a. has or has not occurred; or

(6) Prepares, presents or causes to be presented to any insurer or other person, or demands or requires the issuance of, a certificate of insurance that contains any false or

misleading information concerning the policy of insurance to which the certificate makes reference, or assists, abets, solicits or conspires with another to do any of these acts. As used in this paragraph, "certificate of insurance" means a document or instrument, regardless of how titled or described, that is, or purports to be, prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage. The term shall not include a policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card.

b. A person or practitioner violates this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

c. A person or practitioner violates this act if, due to the assistance, conspiracy or urging of any person or practitioner, he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.

d. A person or practitioner who is the owner, administrator or employee of any hospital violates this act if he knowingly allows the use of the facilities of the hospital by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this act.

e. A person or practitioner violates this act if, for pecuniary gain, for himself or another, he directly or indirectly solicits any person or practitioner to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action, against any person, for damages for negligence, or, for pecuniary gain, for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain, for himself or another, directly or indirectly solicits other persons to make a claim for personal injury protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.); provided, however, that this subsection shall not apply to any conduct otherwise permitted by law or by rule of the Supreme Court.

f. A person who operates a motor vehicle on the public highways of this State, which motor vehicle is insured by a policy issued under the laws of another state, and who maintains a principal residence in this State or who has his motor vehicle principally garaged in this State violates the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) if he has knowingly prepared or made any written or oral statement, presented to any insurance company or producer licensed to transact the business of insurance under the laws of that other state, and which resulted in obtaining a motor vehicle insurance policy for his motor vehicle in that other state, that the person to be insured:

(1) Maintains a principal residence in the other state when, in fact, that person's principal residence is in this State; or

(2) Has his vehicle principally garaged in the other state, when, in fact, that person has his motor vehicle principally garaged in this State.

This subsection shall not apply to a person who insures a vehicle in another state, as permitted by and in accordance with the laws of that state, based on a second residence, or attendance at an educational institution, in that other state, if in obtaining the policy the person truthfully discloses to the insurance company or producer the state of the person's principal residence and the state where the vehicle is principally garaged.

g. A person, organization, or business violates the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) if such person, organization, or business purposely or knowingly:

(1) Makes a false or misleading statement, representation, or submission, including failing to properly classify employees in violation of state wage, benefit and tax laws as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), for the purpose of evading the full payment of insurance benefits or premiums; or

(2) Coerces, solicits, or encourages, or employs, contracts, or otherwise conspires with a person to coerce, solicit, or encourage, any individual to make a false or misleading statement, representation or submission concerning any fact that is material to a claim for insurance benefits, or the payment of insurance benefits or insurance premiums, for the purpose of wrongfully obtaining the benefits or of evading the full payment of the insurance benefits or insurance premiums.

3. Section 5 of P.L.1983, c.320 (C.17:33A-5) is amended to read as follows:

C.17:33A-5 Remedies; penalties; fund established.

5. a. Whenever the commissioner determines that a person has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may either:

- (1) bring a civil action in accordance with subsection b. of this section; or
- (2) levy a civil administrative penalty and order restitution in accordance with subsection c. of this section.

In addition to or as an alternative to the remedies provided in this section, the commissioner may request the Attorney General to bring a criminal action under applicable criminal statutes. Additionally, nothing in this section shall be construed to preclude the commissioner from referring the matter to appropriate state licensing authorities, including the insurance producer licensing section in the Department of Banking and Insurance, for consideration of licensing actions, including license suspension or revocation.

b. Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation, provided that if the person violates section 4 of P.L.1983, c.320 (C.17:33A-4) the penalty shall be \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the commissioner.

c. The commissioner is authorized to assess a civil and administrative penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and to order restitution to any insurance company or other person who has suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.), provided that if the provision violated was subsection g. of section 4 of P.L.1983, c.320 (C.17:33A-4), the commissioner shall assess a civil and administrative penalty of \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation and shall order restitution to any insurance company or other person who has suffered a loss as a result of a violation of subsection g. of section 4 of P.L.1983, c.320 (C.17:33A-4). No assessment shall be levied pursuant to this subsection until the violator has been notified by certified mail or personal service. The notice shall contain a concise statement of facts providing the basis for the determination of a violation of P.L.1983, c.320 (C.17:33A-4), the provisions of that act violated, a statement of the amount of civil penalties assessed and a statement of the party's right to a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing containing an answer to the statement of facts contained in the notice. After the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order assessing up

to the amount of the penalty in the notice, restitution, and costs of prosecution, including attorneys' fees. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with P.L.1983, c.320 (C.17:33A-1 et seq.). Any penalty collected pursuant to this subsection shall be used in accordance with subsection e. of this section.

d. Nothing in this section shall be construed to prohibit the commissioner and the person or practitioner alleged to be guilty of a violation of this act from entering into a written agreement in which the person or practitioner does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may contain a provision that it shall not be used in a subsequent civil or criminal proceeding relating to any violation of this act, but notification thereof shall be made to a licensing authority in the same manner as required pursuant to subsection c. of section 10 of P.L.1983, c.320 (C.17:33A-10). The existence of a consent agreement under this subsection shall not preclude any licensing authority from taking appropriate administrative action against a licensee over which it has regulatory authority, nor shall such a consent agreement preclude referral to law enforcement for consideration of criminal prosecution.

e. The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund into which shall be deposited all revenues from the civil penalties imposed pursuant to this section. Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the Commissioner of Banking and Insurance and shall be used to help defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to help defray the operating expenses of the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).

4. Section 9 of P.L.1983, c.320 (C.17:33A-9) is amended to read as follows:

C.17:33A-9 Alleged violations; civil liability; referrals; records.

9. a. (1) Any person who believes that a violation of this act has been or is being made shall notify the bureau and the Office of the Insurance Fraud Prosecutor immediately after discovery of the alleged violation of this act and shall send to the bureau and office, on a form and in a manner jointly prescribed by the commissioner and the Insurance Fraud Prosecutor, the information requested and such additional information relative to the alleged violation as the bureau or office may require. The bureau and the office shall jointly review the reports and select those alleged violations as may require further investigation by the office for possible criminal prosecution, and those that may warrant investigation and possible civil action or enforcement proceeding by the bureau in lieu of or in addition to criminal prosecution. The bureau and office may consult, as necessary, the Department of Labor and Workforce Development to assist with the investigation of the failure to properly classify employees in violation of any provision of State wage, benefit and tax laws as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11) for the purpose of wrongfully obtaining the benefits or of evading the full payment of the insurance benefits or insurance

premiums. The Insurance Fraud Prosecutor and the assistant commissioner shall meet monthly to ensure that reports are handled in an expedited fashion.

(2) Whenever the Bureau of Fraud Deterrence or any employee of the bureau obtains information or evidence of a reasonable possibility of criminal wrongdoing not previously known or disclosed to the Office of the Insurance Fraud Prosecutor, the bureau shall immediately refer that information or evidence to that office. In determining whether a referral to the office is appropriate, the bureau shall utilize appropriate levels of internal review, which shall include but not be limited to approval at the assistant commissioner level. Upon referral, the bureau shall provide the office with all documents related to the referral consistent with section 39 of P.L.1998, c.21 (C.17:33A-23).

b. No person shall be subject to civil liability for libel, violation of privacy or otherwise by virtue of the filing of reports or furnishing of other information, in good faith and without malice, required by this section or required by the bureau or the Office of the Insurance Fraud Prosecutor as a result of the authority conferred upon it by law.

c. The commissioner may, by regulation, require insurance companies licensed to do business in this State to keep such records and other information as he deems necessary for the effective enforcement of this act.

5. R.S.54:50-8 is amended to read as follows:

Confidentiality.

54:50-8. a. The records and files of the director respecting the administration of the State Uniform Tax Procedure Law or of any State tax law shall be considered confidential and privileged and neither the director nor any employee engaged in the administration thereof or charged with the custody of any such records or files, nor any former officer or employee, nor any person who may have secured information therefrom under subsection d., e., f., g., p., q., r., or s. of R.S.54:50-9 or any other provision of State law, shall divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the director nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of the State Uniform Tax Procedure Law or of the State tax law affected, or where the determination of the action or proceeding will affect the validity or amount of the claim of the State under some State tax law, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of the State Uniform Tax Procedure Law or of any State tax law.

b. The prohibitions of this section, against unauthorized disclosure, use or examination by any present or former officer or employee of this State or any other individual having custody of such information obtained pursuant to the explicit authority of State law, shall specifically include, without limitation, violations involving the divulgence or examination of any information from or any copy of a federal return or federal return information required by New Jersey law to be attached to or included in any New Jersey return. Any person violating this section by divulging, disclosing or using information shall be guilty of a crime of the fourth degree. Any person violating this section by examining records or files for any

reason other than a reason necessitated by the performance of official duties shall be guilty of a disorderly persons offense.

c. Whenever records and files are used in connection with the prosecution of any person for violating the provisions of this section by divulging, disclosing or using records or files or examining records and files for any reason other than a reason necessitated by the performance of official duties, the defendant shall be given access to those records and files. The court shall review such records and files in camera, and that portion of the court record containing the records and files shall be sealed by the court.

6. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or the taxpayer's duly authorized representative of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The director, in the director's discretion and subject to reasonable conditions imposed by the director, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the director, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the director, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the director to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub.L.93-647 (42 U.S.C. s.651 et seq.), with the names, home addresses, social security numbers and sources of income and assets of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director;

i. The furnishing by the director to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-5.25 et al.);

j. The furnishing by the director to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax

information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes;

k. The inspection by the Attorney General or other legal representative of this State of the reports or files of any tobacco product manufacturer, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), for any period in which that tobacco product manufacturer was not or is not in compliance with subsection a. of section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2), for the purpose of facilitating the administration of the provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);

l. The furnishing, at the discretion of the director, of information as to whether a contractor or subcontractor holds a valid business registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44);

m. The furnishing by the director to a State agency as defined in section 1 of P.L.1995, c.158 (C.54:50-24) the names of licensees subject to suspension for non-payment of State tax indebtedness pursuant to P.L.2004, c.58 (C.54:50-26.1 et al.);

n. The release to the United States Department of the Treasury, Bureau of Financial Management Service, or its successor of relevant taxpayer information for purposes of implementing a reciprocal collection and offset of indebtedness agreement entered into between the State of New Jersey and the federal government pursuant to section 1 of P.L.2006, c.32 (C.54:49-12.7);

o. The examination of said records and files by the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Medicaid Inspector General, or their respective duly authorized agents, pursuant to section 5 of P.L.2007, c.217 (C.26:2H-18.60e), section 3 of P.L.1968, c.413 (C.30:4D-3), or section 5 of P.L.2005, c.156 (C.30:4J-12);

p. The furnishing at the discretion of the director of employer provided wage and tax withholding information contained in tax reports or returns filed pursuant to N.J.S.54A:7-2, 54A:7-4 and 54A:7-7, to the designated municipal officer of a municipality authorized to impose an employer payroll tax pursuant to the provisions of Article 5 (Employer Payroll Tax) of the "Local Tax Authorization Act," P.L.1970, c.326 (C.40:48C-14 et seq.), for the limited purpose of verifying the payroll information reported by employers subject to the employer payroll tax;

q. The furnishing by the director to the Commissioner of Labor and Workforce Development of any information, including, but not limited to, tax information statements, reports, audit files, returns, or reports of any investigation for the purpose of labor market research or assisting in investigations pursuant to any State wage, benefit or tax law as enumerated in section 1 of P.L.2009, c.194 (C.34:1A-1.11); or pursuant to P.L.1940, c.153 (C.34:2-21.1 et seq.).

r. The furnishing by the director to the New Jersey Economic Development Authority any information contained in tax information statements, reports or returns, or any audit thereof or a report of any investigation made with respect thereto, as may be relevant to assist the authority in the implementation of programs through which grants, loans, tax credits, or other forms of financial assistance are provided. The director shall provide to the New Jersey Economic Development Authority, upon request, such information.

s. The furnishing by the director to the Commissioner of Banking and Insurance of any information, including, but not limited to, tax information statements, reports, audit files,

returns, or reports of any investigation for the purpose of assisting in investigations pursuant to any insurance fraud investigation as enumerated in P.L.1983, c.320 (C.17:33A-1 et seq.).

7. This act shall take effect on the first day of the sixth month next following the date of enactment.

Approved July 8, 2021.