

SENATE, No. 396

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1953

By Mr. BODINE

Referred to Committee on Labor and Industries

AN ACT concerning unemployment compensation, and amending section 43:21-14
of the Revised Statutes.

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

1 1. Section 43:21-14 of the Revised Statutes is amended to read as fol-
2 lows:

3 43:21-14. (a) In addition to such reports as the Director of the Division
4 of Employment Security may require under the provisions of subsection (g)
5 of section 43:21-11 of this chapter (R. S. 43:21-1 et seq.), every employer
6 shall file with the division periodical contribution reports on such forms and
7 at such times as the director shall prescribe, to disclose the employer's lia-
8 bility for contributions under the provisions of this chapter (R. S. 43:21-1
9 et seq.), and at the time of filing each contribution report shall pay the con-
10 tributions required by this chapter (R. S. 43:21-1 et seq.) for the period
11 covered by such report. The director may require that such reports shall be
12 under oath of the employer. Any employer who shall fail to file any report,
13 required by the director, on or before the last day for the filing thereof shall
14 pay a penalty of one dollar (\$1.00) for each day of delinquency until and in-
15 cluding the tenth day following such last day and, for any period of delin-
16 quency after such tenth day, a penalty of one dollar (\$1.00) a day or twenty
17 per centum (20%) of the amount of the contributions due and payable by the

18 employer for the period covered by the report, whichever is the lesser. If
19 there be no liability for contributions for the period covered by any contribu-
20 tion report or in the case of any report other than a contribution report, the
21 employer or employing unit shall pay a penalty of one dollar (\$1.00) a day
22 for each day of delinquency in filing or fifteen dollars (\$15.00), whichever is
23 the lesser. Any employer who shall fail to pay the contributions due for any
24 period on or before the date they are required by the division to be paid,
25 shall pay interest at the rate of one per centum (1%) a month on the amount
26 thereof from such date until the date of payment thereof. Upon the written
27 request of any employer or employing unit, filed with the division on or be-
28 fore the due date of any report or contribution payment, the director, for
29 good cause shown, may grant, in writing, an extension of time for the filing of
30 such report or the paying of such contribution with interest at the rate of
31 one per centum (1%) a month on the amount thereof; *provided*, no such ex-
32 tension shall exceed thirty days and that no such extension shall postpone
33 payment of any contribution for any period beyond the day preceding the last
34 day for filing tax returns under Title IX of the Federal Social Security Act
35 for the year in which such period occurs.

36 (b) The contributions, penalties, and interest due from any employer un-
37 der the provisions of this chapter (R. S. 43:21-1 et seq.), from the time they
38 shall be due, shall be a personal debt of the employer to the State of New Jer-
39 sey, recoverable in any court of competent jurisdiction in an action at law in
40 the name of the State of New Jersey; *provided, however*, that except in the
41 event of fraud, no employer shall be liable for contributions, penalties or in-
42 terest unless assessed before four years have elapsed from the time when
43 the contributions were due. Upon application therefor, the division shall fur-
44 nish interested persons and entities certificates of indebtedness covering em-
45 ployers, employing units and others for contributions, penalties and interest,
46 for each of which certificates the division shall charge and collect a fee of
47 twenty-five cents (\$0.25) per name, no such certificate to be issued, however,
48 for a fee of less than one dollar (\$1.00). All fees so collected shall be paid into
49 the unemployment compensation auxiliary fund.

50 (c) If any employer shall fail to make any report as required by the rules
51 and regulations of the division pursuant to the provisions of this chapter
52 (R. S. 43:21-1 et seq.), the division may make an estimate of the liability of
53 such employer from any information it may obtain and, according to such
54 estimate so made, assess such employer for the contributions, penalties, and
55 interest due the State from him, give notice of such assessment to the em-
56 ployer, and make demand upon him for payment.

57 (d) After a report is filed under the provisions of this chapter (R. S.
58 43:21-1 et seq.) and the rules and regulations of the division, the division
59 shall cause the report to be examined and shall make such further audit and
60 investigation as it may deem necessary, and if therefrom there shall be de-
61 termined that there is a deficiency with respect to the payment of the con-
62 tributions due from such employer, the division shall assess the additional
63 contributions, penalties and interest due the State from such employer, give
64 notice of such assessment to the employer, and make demand upon him for
65 payment.

66 (e) As an additional remedy, the division may issue to the clerk of the
67 Superior Court of New Jersey a certificate stating the amount of the em-
68 ployer's indebtedness under this chapter (R. S. 43:21-1 et seq.) and describ-
69 ing the liability, and thereupon the clerk shall immediately enter upon his
70 record of docketed judgments such certificates or an abstract thereof and
71 duly index the same. Such certificate or abstract from the time of such docket-
72 ing shall have the same force and effect as a judgment obtained in the Su-
73 perior Court of New Jersey, and the division shall have all the remedies and
74 may take all the proceedings for the collection thereof which may be had or
75 taken upon the recovery of such a judgment in an action at law upon con-
76 tract in said court. Such debt, from the time of the docketing thereof, shall be
77 a lien on and bind the lands, tenements, and hereditaments of the debtor.

78 The Clerk of the Superior Court shall be entitled to receive for docketing
79 such certificate fifty cents (\$0.50), and for a certified transcript of such docket
80 fifty cents (\$0.50). If the amount set forth in said certificate as a debt shall

81 be modified or reversed by any court, the Clerk of the Superior Court shall,
82 when an order of modification or reversal is filed, enter in the margin of the
83 docket opposite the entry of the judgment the word "modified" or "re-
84 versed," as the case may be, and the date of such modification or reversal.

85 The employer, or any other person having an interest in the property
86 upon which the debt is a lien, may deposit the amount claimed in the certifi-
87 cate with the Clerk of the Superior Court of New Jersey, together with
88 fifty dollars (\$50.00) to cover interest and the costs of court, or in lieu of
89 depositing the amount in cash, may give a bond to the State of New Jersey
90 in double the amount claimed in the certificate, and file the same with the
91 Clerk of the Superior Court. Said bond shall have such surety and shall be
92 approved in the manner required by the rules of the Supreme Court.

93 After the deposit of said money or the filing of said bond, the employer
94 or any other person having an interest in the said property, may review the
95 legality or validity of the indebtedness or the amount thereof by civil action
96 in lieu of prerogative writs, and the said deposit of cash shall be as security
97 for and the bond shall be conditioned to prosecute the action with effect and to
98 pay and satisfy, if the debt be sustained, the amount adjudged by the court
99 and all interest and costs.

100 Upon the deposit of said money or the filing of the said bond with the
101 Clerk of the Superior Court, all proceedings on such judgment shall be stayed
102 until the final determination of the cause, and the moneys so deposited shall
103 be subject to the lien of the indebtedness and costs and interest thereon, and
104 the lands, tenements, and hereditaments of said debtor shall forthwith be
105 discharged from the lien of the State of New Jersey and no execution shall
106 issue against the same by virtue of said judgment.

107 (f) If not later than two years after the calendar year in which any
108 moneys were erroneously paid to, or collected by the division, whether such
109 payments were voluntarily or involuntarily made or made under mistake of
110 law or of fact, an employer, employing unit, or [an] employee who has paid
111 such moneys shall make application for [an adjudgment of his own contribu-

112 tion in connection with subsequent contribution payments, or for a refund]
113 an adjustment thereof, [of his own contribution because such adjustment can-
114 not be made, and the director of the division shall determine that such
115 moneys or any portion thereof was so erroneously paid or collected, such em-
116 ployer or employee shall be allowed to make an adjustment thereof, without
117 interest, in connection with subsequent contribution payments, or if such ad-
118 justment cannot be made] the said [amount] moneys shall, upon order of
119 the director, be either credited or refunded, without interest, from the appro-
120 priate fund. For like cause and within the same period, [adjustment] credit
121 or refund may be so made on the initiative of the director.

122 (g) All interest and penalties collected pursuant to this section shall be
123 paid into a special fund to be known as the unemployment compensation aux-
124 iliary fund; all moneys in this special fund shall be deposited, administered
125 and disbursed, in the same manner and under the same conditions and re-
126 quirements as is provided by law for other special funds in the State treas-
127 ury, and shall be expended, under legislative appropriation, solely for the
128 purpose of aiding in defraying the cost of the administration of this chapter
129 (R. S. 43:21-1 et seq.) and for essential and necessary expenditures in con-
130 nection herewith not provided in or by grants of the Federal Government.
131 The Treasurer of the State shall be ex officio the treasurer and custodian
132 of this special fund and, subject to legislative appropriation, shall administer
133 the fund in accordance with the directions of the division. Any balances in
134 this fund shall not lapse at any time, but shall be continuously available, sub-
135 ject to legislative appropriation, to the division for expenditure. The State
136 Treasurer shall give a separate and additional bond conditioned upon the
137 faithful performance of his duties in connection with the unemployment com-
138 pensation auxiliary fund in an amount to be fixed by the division, the premi-
139 ums for such bond to be paid from the moneys in the said special fund.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to permit the Division of Employment Security to refund overpayments of contributions, penalties and interest in lieu of issuing overpayment certificates to be used by employers on potential liabilities accrued in later periods. This provision was suggested by the Bureau of Employment Security, U. S. Department of Labor, after its representatives made a survey and determined that the work involved in issuing, receiving, processing and crediting overpayment certificates involved unnecessary administrative tasks which substantially increased the cost of administration.

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111 moneys shall make application for an adjustment thereof, the said moneys

112 shall, upon order of the director, be either credited or refunded, without
113 interest, from the appropriate fund. For like cause and within the same
114-121 period, credit or refund may be so made on the initiative of the director.

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125 and disbursed, in the same manner and under the same conditions and re-
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