

43:21-16

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 124

NJSA: 43:21-16 (Concerns assessment of penalties for certain fraudulently obtained unemployment benefits and requires recovered penalties deposited into unemployment compensation fund)

BILL NO: S2738 (Substituted for A4186)

SPONSOR(S) Madden and others

DATE INTRODUCED: May 9, 2013

COMMITTEE: **ASSEMBLY:** -

SENATE: Labor
 Budget and Appropriations

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2013

SENATE: June 20, 2013

DATE OF APPROVAL: August 9, 2013

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted) Yes

S2738

SPONSOR'S STATEMENT (Begins on page 7 of introduced bill): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Labor
 Budget

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A4186

SPONSOR'S STATEMENT: (Begins on page 7 introduced bill): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Space-sponsored bill becomes law," The Advertise-News, 8-14-13

"Space bill on penalties for unemployment insurance fraud released by committee," The Advertiser-News, 6-26-13

LAW/RWH

P.L.2013, CHAPTER 124, *approved August 9, 2013*

Senate, No. 2738

1 AN ACT concerning the assessment of penalties for fraudulently
2 obtained unemployment benefits 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 **[\$20.00 for each**
15 **offense, or]** 25% of the amount fraudulently obtained, **[whichever**
16 **is 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 **[to]** shall be **[paid to]** immediately deposited
21 in the following manner: 10 percent of the amount fraudulently
22 obtained deposited into the unemployment compensation auxiliary
23 fund for the use of said fund, and 15 percent of the amount
24 fraudulently obtained deposited into the unemployment
25 compensation fund; and each such false statement or representation
26 or failure to disclose a material fact shall constitute a separate
27 offense. Any penalties imposed by this subsection shall be in
28 addition to those otherwise prescribed in this chapter (R.S.43:21-1
29 et seq.).

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

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

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

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 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
2 2294

3 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
4 5177(a);

5 (E) Any federal temporary extension of unemployment
6 compensation;

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

9 (G) Any other federal program providing for the payment of
10 unemployment compensation.

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

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

1 and when recovered shall be paid to the unemployment
2 compensation auxiliary fund for the use of said fund.

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

18 (c) Any person who shall willfully violate any provision of this
19 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,
20 the violation of which is made unlawful or the observance of which
21 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
22 for which a penalty is neither prescribed herein nor provided by any
23 other applicable statute, shall be liable to a fine of \$50.00, to be
24 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, said
28 fine when recovered to be paid to the unemployment compensation
29 auxiliary fund for the use of said fund; and each day such violation
30 continues shall be deemed to be a separate offense.

31 (d) (1) When it is determined by a representative or
32 representatives designated by the Director of 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 that any person, whether (i) by reason of the
36 nondisclosure or misrepresentation by him or by another of a
37 material fact (whether or not such nondisclosure or
38 misrepresentation was known or fraudulent), or (ii) for any other
39 reason, has received any sum as benefits under this chapter
40 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
41 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
42 his case, or while he was disqualified from receiving benefits, or
43 while otherwise not entitled to receive such sum as benefits, such
44 person, unless the director (with the concurrence of the controller)
45 directs otherwise by regulation, shall be liable to repay those
46 benefits in full. The employer's account shall not be charged for the
47 amount of an overpayment of benefits if the overpayment was
48 caused by an error of the division and not by any error of the

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

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

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

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

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

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

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

47 (f) Any employing unit or any officer or agent of an employing
48 unit or any other person who aids and abets any person to obtain

1 any sum of benefits under this chapter to which he is not entitled, or
2 a larger amount as benefits than that to which he is justly entitled,
3 shall be liable for each offense upon conviction before any Superior
4 Court or municipal court, to a fine not to exceed \$1,000.00 or by
5 imprisonment for a term not to exceed 90 days, or both, at the
6 discretion of the court. The fine upon conviction shall be payable to
7 the unemployment compensation auxiliary fund. Any penalties
8 imposed by this subsection shall be in addition to those otherwise
9 prescribed in this chapter (R.S.43:21-1 et seq.).

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

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

30 (cf: P.L.2010, c.82, s.2)

31

32 2. This act shall take effect immediately.

33

34

35

STATEMENT

36

37 This bill requires that the Department of Labor and Workforce
38 Development immediately deposit any amount recovered from the
39 assessment of penalties related to the payment of unemployment
40 benefits obtained fraudulently by an individual under the State's
41 unemployment compensation program. The bill provides that a
42 recovered fine of 15 percent of the amount fraudulently obtained by
43 an individual will be immediately deposited into the State
44 unemployment compensation fund (UI trust fund), and a recovered
45 fine of 10 percent of the amount fraudulently obtained will be
46 deposited into the unemployment compensation auxiliary fund.

47 Currently, the penalty assessed against an individual that obtains
48 benefits fraudulently is \$20, or 25 percent of the amount

1 fraudulently obtained, whichever is greater, and the recovered fine
2 is fully deposited into the unemployment compensation auxiliary
3 fund. The bill revises the penalty so that it is strictly 25 percent of
4 the amount fraudulently obtained, and requires that the recovered
5 fine be deposited in the UI trust fund and the auxiliary fund.

6 The bill also requires that the same assessment of penalties and
7 deposit of penalties into the State's UI trust fund and auxiliary fund
8 apply to benefits obtained fraudulently by individuals under any
9 federal unemployment compensation program, including:

- 10 1. Unemployment compensation for federal civilian employees,
- 11 2. Unemployment compensation for ex-service members,
- 12 3. Trade readjustment allowances, disaster unemployment
13 assistance,
- 14 4. Any federal temporary extension of unemployment
15 compensation,
- 16 5. Any federal program that increases the weekly amount of
17 unemployment compensation payable to individuals, and
- 18 6. Any other federal program providing for the payment of
19 unemployment compensation.

20

21

22

23

24 Concerns assessment of penalties for certain fraudulently
25 obtained unemployment benefits and requires recovered penalties
26 deposited into unemployment compensation fund.

SENATE, No. 2738

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 9, 2013

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris and Somerset)

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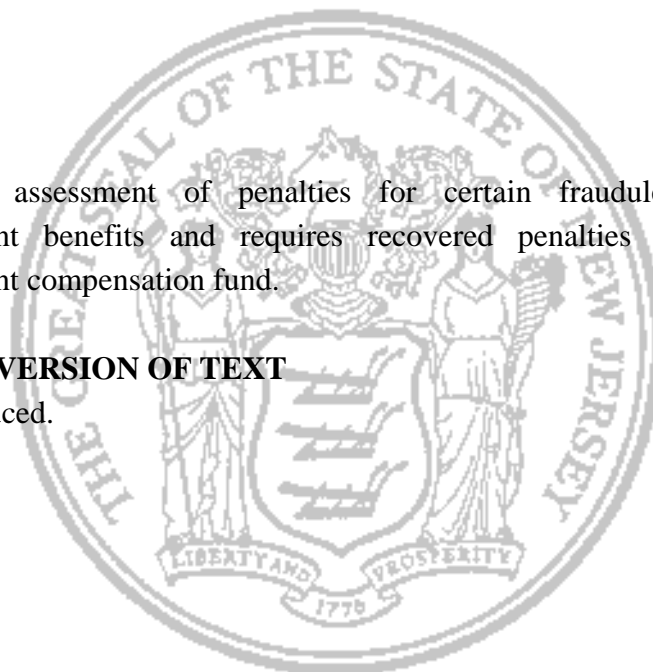
Senators Addiego, Beach, Gordon, Assemblywoman Angelini, Assemblymen Rumana, McGuckin, C.J.Brown, Assemblywoman Handlin, Assemblymen Clifton, Rible, Amodeo, Assemblywoman N.Munoz, Assemblymen C.A.Brown, Webber, Assemblywomen Schepisi, B.DeCroce, Assemblyman Wolfe, Assemblywoman Gove, Assemblymen Rudder, Schroeder, Dancer, Assemblywoman Casagrande, Assemblymen Ciattarelli, DiMaio, Assemblywoman Simon and Assemblyman Coughlin

SYNOPSIS

Concerns assessment of penalties for certain fraudulently obtained unemployment benefits and requires recovered penalties deposited into unemployment compensation fund.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/25/2013)

1 AN ACT concerning the assessment of penalties for fraudulently
2 obtained unemployment benefits 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 **[\$20.00 for each**
15 **offense, or]** 25% of the amount fraudulently obtained, **[whichever**
16 **is 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 **[to]** shall be [paid to] immediately deposited
21 in the following manner: 10 percent of the amount fraudulently
22 obtained deposited into the unemployment compensation auxiliary
23 fund for the use of said fund, and 15 percent of the amount
24 fraudulently obtained deposited into the unemployment
25 compensation fund; and each such false statement or representation
26 or failure to disclose a material fact shall constitute a separate
27 offense. Any penalties imposed by this subsection shall be in
28 addition to those otherwise prescribed in this chapter (R.S.43:21-1
29 et seq.).

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

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

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

42 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
43 2294

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 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
2 5177(a);

3 (E) Any federal temporary extension of unemployment
4 compensation;

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

7 (G) Any other federal program providing for the payment of
8 unemployment compensation.

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

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

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

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

29 (d) (1) When it is determined by a representative or
30 representatives designated by the Director of the Division of
31 Unemployment and Temporary Disability Insurance of the
32 Department of Labor and Workforce Development of the State of
33 New Jersey that any person, whether (i) by reason of the
34 nondisclosure or misrepresentation by him or by another of a
35 material fact (whether or not such nondisclosure or
36 misrepresentation was known or fraudulent), or (ii) for any other
37 reason, has received any sum as benefits under this chapter
38 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
39 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
40 his case, or while he was disqualified from receiving benefits, or
41 while otherwise not entitled to receive such sum as benefits, such
42 person, unless the director (with the concurrence of the controller)
43 directs otherwise by regulation, shall be liable to repay those
44 benefits in full. The employer's account shall not be charged for the
45 amount of an overpayment of benefits if the overpayment was
46 caused by an error of the division and not by any error of the
47 employer. The sum shall be deducted from any future benefits
48 payable to the individual under this chapter (R.S.43:21-1 et seq.) or

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

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

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

35 (B) Overpayments of unemployment benefits as determined
36 under applicable federal law, with respect to benefits or allowances
37 for unemployment provided under a federal program administered
38 by this State under an agreement with the United States Secretary of
39 Labor, shall be recovered by offset from unemployment benefits
40 otherwise payable under R.S.43:21-1 et seq., or any federal program
41 administered by this State, or under the unemployment
42 compensation law of another state or any federal unemployment
43 benefit or allowance program administered by another state under
44 an agreement with the United States Secretary of Labor, if the other
45 state has in effect a reciprocal agreement with the United States
46 Secretary of Labor as authorized by subsection (g) of 42
47 U.S.C.s.503, and if the United States agrees, as provided in the
48 reciprocal agreement with this State entered into under subsection

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

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

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

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

1 shall be liable for each offense upon conviction before any Superior
2 Court or municipal court, to a fine not to exceed \$1,000.00 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. Any penalties
6 imposed by this subsection shall be in addition to those otherwise
7 prescribed in this chapter (R.S.43:21-1 et seq.).

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

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

28 (cf: P.L.2010, c.82, s.2)

29

30 2. This act shall take effect immediately.

31

32

33

STATEMENT

34

35 This bill requires that the Department of Labor and Workforce
36 Development immediately deposit any amount recovered from the
37 assessment of penalties related to the payment of unemployment
38 benefits obtained fraudulently by an individual under the State's
39 unemployment compensation program. The bill provides that a
40 recovered fine of 15 percent of the amount fraudulently obtained by
41 an individual will be immediately deposited into the State
42 unemployment compensation fund (UI trust fund), and a recovered
43 fine of 10 percent of the amount fraudulently obtained will be
44 deposited into the unemployment compensation auxiliary fund.

45 Currently, the penalty assessed against an individual that obtains
46 benefits fraudulently is \$20, or 25 percent of the amount
47 fraudulently obtained, whichever is greater, and the recovered fine
48 is fully deposited into the unemployment compensation auxiliary

1 fund. The bill revises the penalty so that it is strictly 25 percent of
2 the amount fraudulently obtained, and requires that the recovered
3 fine be deposited in the UI trust fund and the auxiliary fund.

4 The bill also requires that the same assessment of penalties and
5 deposit of penalties into the State's UI trust fund and auxiliary fund
6 apply to benefits obtained fraudulently by individuals under any
7 federal unemployment compensation program, including:

- 8 1. Unemployment compensation for federal civilian employees,
- 9 2. Unemployment compensation for ex-service members,
- 10 3. Trade readjustment allowances, disaster unemployment
11 assistance,
- 12 4. Any federal temporary extension of unemployment
13 compensation,
- 14 5. Any federal program that increases the weekly amount of
15 unemployment compensation payable to individuals, and
- 16 6. Any other federal program providing for the payment of
17 unemployment compensation.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2738

STATE OF NEW JERSEY

DATED: MAY 9, 2013

The Senate Labor Committee reports favorably Senate Bill No. 2738.

This bill requires that the Department of Labor and Workforce Development immediately deposit any amount recovered from the assessment of penalties related to the payment of unemployment benefits obtained fraudulently by an individual under the State's unemployment compensation program. The bill provides that a recovered fine of 15 percent of the amount fraudulently obtained by an individual will be immediately deposited into the State unemployment compensation fund (UI trust fund), and a recovered fine of 10 percent of the amount fraudulently obtained will be deposited into the unemployment compensation auxiliary fund.

Currently, the penalty assessed against an individual that obtains benefits fraudulently is \$20, or 25 percent of the amount fraudulently obtained, whichever is greater, and the recovered fine is fully deposited into the unemployment compensation auxiliary fund. The bill revises the penalty so that it is strictly 25 percent of the amount fraudulently obtained, and requires that the recovered fine be deposited in the UI trust fund and the auxiliary fund.

The bill also requires that the same assessment of penalties and deposit of penalties into the State's UI trust fund and auxiliary fund apply to benefits obtained fraudulently by individuals under any federal unemployment compensation program, including:

1. Unemployment compensation for federal civilian employees,
2. Unemployment compensation for ex-service members,
3. Trade readjustment allowances, disaster unemployment assistance,
4. Any federal temporary extension of unemployment compensation,
5. Any federal program that increases the weekly amount of unemployment compensation payable to individuals, and
6. Any other federal program providing for the payment of unemployment compensation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2738

STATE OF NEW JERSEY

DATED: JUNE 3, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2738.

This bill requires that the Department of Labor and Workforce Development immediately deposit any amount recovered from the assessment of penalties related to the payment of unemployment benefits obtained fraudulently by an individual under the State's unemployment compensation program. Specifically, the bill provides that a recovered fine of 15 percent of the amount fraudulently obtained by an individual be immediately deposited into the State unemployment compensation fund (UI trust fund), and a recovered fine of 10 percent of the amount fraudulently obtained be deposited into the unemployment compensation auxiliary fund.

Currently, the penalty assessed against an individual who obtains benefits fraudulently is \$20, or 25 percent of the amount fraudulently obtained, whichever is greater, and the recovered fine is fully deposited into the unemployment compensation auxiliary fund. The bill revises the penalty so that it is strictly 25 percent of the amount fraudulently obtained, and requires that the recovered fine be deposited in the UI trust fund and the auxiliary fund.

The bill also requires that the same assessment of penalties and deposit of penalties into the State's UI trust fund and auxiliary fund apply to benefits obtained fraudulently by individuals under any federal unemployment compensation program, including:

1. Unemployment compensation for federal civilian employees,
2. Unemployment compensation for ex-service members,
3. Trade readjustment allowances, disaster unemployment assistance,
4. Any federal temporary extension of unemployment compensation,
5. Any federal program that increases the weekly amount of unemployment compensation payable to individuals, and
6. Any other federal program providing for the payment of unemployment compensation.

FISCAL IMPACT:

The OLS estimates that this legislation will result in an indeterminate revenue loss to the UCAF matched by an indeterminate revenue gain for the UI trust fund.

Currently, a 25 percent penalty is imposed on the total amount of benefits fraudulently obtained by an individual and all recovered penalties are deposited into the UCAF. Under the bill, the penalty dedicated to the UCAF will be reduced from 25 percent to 10 percent of the total amount fraudulently obtained and the penalty dedicated to the UI trust fund will be 15 percent of the total fraudulently obtained.

The UCAF is the repository for all interest and penalties imposed upon employers and individuals for violation of unemployment insurance regulations. Moneys from the UCAF are to be used for the cost of the administration of the UI trust fund, as well as various other programs as determined by the commissioner.

Without further information from the department, it is not possible to determine with any certainty the total amount of penalties collected from individuals who fraudulently collect benefits each year.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2738
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: JUNE 3, 2013

SUMMARY

- Synopsis:** Concerns assessment of penalties for certain fraudulently obtained unemployment benefits and requires recovered penalties deposited into unemployment compensation fund.
- Type of Impact:** Revenue loss to the unemployment compensation auxiliary fund (UCAF) matched by an equal revenue gain for the unemployment insurance compensation trust fund (UI trust fund).
- Agencies Affected:** Department of Labor and Workforce Development

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 2</u>
Revenue loss – UCAF	Indeterminate – See comments below
Revenue gain – UI trust fund	Indeterminate – See comments below

- Senate Bill No. 2738 requires that the Department of Labor and Workforce Development assess a 25 percent penalty on an individual who fraudulently obtains unemployment insurance compensation benefits. The bill directs that 15 percent be deposited into the UI trust fund and 10 percent deposited into the UCAF. Currently, the penalty is 25 percent or \$20, whichever is greater, and is deposited entirely in the UCAF.
- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate revenue loss to the UCAF due to the diversion of the penalty revenue from the UCAF to the UI trust fund.
- Furthermore, the OLS estimates that this bill will result in an indeterminate revenue gain for the UI trust fund from the portion of the penalty that will now be directed to the UI trust fund.

BILL DESCRIPTION

Senate Bill No. 2738 of 2013 requires that the Department of Labor and Workforce Development immediately deposit any amount recovered from the assessment of penalties related to the payment of unemployment benefits obtained fraudulently by an individual under the State's unemployment compensation program. The bill provides that a recovered fine of 15 percent of the amount fraudulently obtained by an individual will be immediately deposited into the UI trust fund, and a recovered fine of 10 percent of the amount fraudulently obtained will be deposited into the UCAF.

Currently, the penalty assessed against an individual that obtains benefits fraudulently is \$20, or 25 percent of the amount fraudulently obtained, whichever is greater, and the recovered fine is fully deposited into the UCAF. The bill revises the penalty so that it is strictly 25 percent of the amount fraudulently obtained, and requires that the recovered fine be deposited in the UI trust fund and the UCAF.

The bill also requires that the same assessment of penalties and deposit of penalties into the State's UI trust fund and the UCAF apply to benefits obtained fraudulently by individuals under any federal unemployment compensation program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that Senate Bill No. 2738 will result in an indeterminate revenue loss to the UCAF matched by an indeterminate revenue gain for the UI trust fund.

Currently, a 25 percent penalty is imposed on the total amount of benefits fraudulently obtained by an individual and all recovered penalties are deposited into the UCAF. Under the bill, the penalty dedicated to the UCAF will be reduced from 25 percent to 10 percent of the total amount fraudulently obtained and the penalty dedicated to the UI trust fund will be 15 percent of the total fraudulently obtained.

The UCAF is the repository for all interest and penalties imposed upon employers and individuals for violation of unemployment insurance regulations. Moneys from the UCAF are to be used for the cost of the administration of the UI trust fund, as well as various other programs as determined by the commissioner.

Without further information from the department, it is not possible to determine with any certainty the total amount of penalties collected from individuals who fraudulently collect benefits each year.

Section: Commerce, Labor and Industry

Analyst: Robin C. Ford
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

FE to S2738

3

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4186

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 10, 2013

Sponsored by:

Assemblyman PARKER SPACE
District 24 (Morris, Sussex and Warren)
Assemblyman ANTHONY M. BUCCO
District 25 (Morris and Somerset)

Co-Sponsored by:

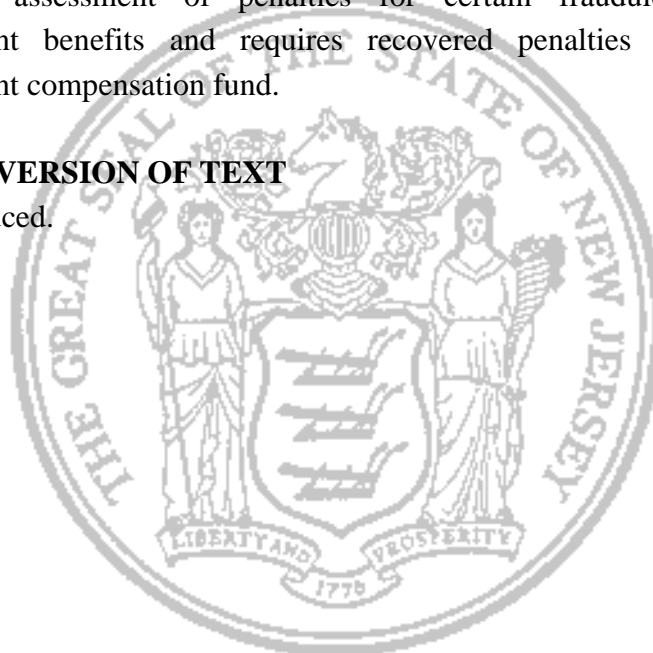
Assemblywoman Angelini, Assemblymen Rumana, McGuckin, C.J.Brown,
Assemblywoman Handlin, Assemblymen Clifton, Rible, Amodeo,
Assemblywoman N.Munoz, Assemblymen C.A.Brown, Webber,
Assemblywomen Schepisi, B.DeCroce, Assemblyman Wolfe,
Assemblywoman Gove, Assemblymen Rudder, Schroeder, Dancer,
Assemblywoman Casagrande, Assemblymen Ciattarelli, DiMaio,
Assemblywoman Simon and Assemblyman Coughlin

SYNOPSIS

Concerns assessment of penalties for certain fraudulently obtained unemployment benefits and requires recovered penalties deposited into unemployment compensation fund.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/25/2013)

1 AN ACT concerning the assessment of penalties for fraudulently
2 obtained unemployment benefits 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 **[\$20.00 for each**
15 **offense, or]** 25% of the amount fraudulently obtained, **[whichever**
16 **is 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 **[to]** shall be [paid to] immediately deposited
21 in the following manner: 10 percent of the amount fraudulently
22 obtained deposited into the unemployment compensation auxiliary
23 fund for the use of said fund, and 15 percent of the amount
24 fraudulently obtained deposited into the unemployment
25 compensation fund; and each such false statement or representation
26 or failure to disclose a material fact shall constitute a separate
27 offense. Any penalties imposed by this subsection shall be in
28 addition to those otherwise prescribed in this chapter (R.S.43:21-1
29 et seq.).

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

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

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

42 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
43 2294

44 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
45 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 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. The employer's account shall not be charged for the
42 amount of an overpayment of benefits if the overpayment was
43 caused by an error of the division and not by any error of the
44 employer. The sum shall be deducted from any future benefits
45 payable to the individual under this chapter (R.S.43:21-1 et seq.) or
46 shall be paid by the individual to the division for the unemployment
47 compensation fund, and such sum shall be collectible in the manner
48 provided for by law, including, but not limited to, the filing of a

1 certificate of debt with the Clerk of the Superior Court of New
2 Jersey; provided, however, that, except in the event of fraud, no
3 person shall be liable for any such refunds or deductions against
4 future benefits unless so notified before four years have elapsed
5 from the time the benefits in question were paid. Such person shall
6 be promptly notified of the determination and the reasons therefor.
7 The determination shall be final unless the person files an appeal of
8 the determination within seven calendar days after the delivery of
9 the determination, or within 10 calendar days after such notification
10 was mailed to his last-known address, for any determination made
11 on or before December 1, 2010, and any initial determination made
12 pursuant to paragraph (1) of subsection (b) of R.S.43:21-6 after
13 December 1, 2010, or within 20 calendar days after the delivery of
14 such determination, or within 20 calendar days after such
15 notification was mailed to his last-known address, for any
16 determination other than an initial determination made after
17 December 1, 2010.

18 (2) Interstate and cross-offset of state and federal unemployment
19 benefits. To the extent permissible under the laws and Constitution
20 of the United States, the commissioner is authorized to enter into or
21 cooperate in arrangements or reciprocal agreements with
22 appropriate and duly authorized agencies of other states or the
23 United States Secretary of Labor, or both, whereby:

24 (A) Overpayments of unemployment benefits as determined
25 under subsection (d) of R.S.43:21-16 shall be recovered by offset
26 from unemployment benefits otherwise payable under the
27 unemployment compensation law of another state, and
28 overpayments of unemployment benefits as determined under the
29 unemployment compensation law of another state shall be
30 recovered by offset from unemployment benefits otherwise payable
31 under R.S.43:21-1 et seq.; and

32 (B) Overpayments of unemployment benefits as determined
33 under applicable federal law, with respect to benefits or allowances
34 for unemployment provided under a federal program administered
35 by this State under an agreement with the United States Secretary of
36 Labor, shall be recovered by offset from unemployment benefits
37 otherwise payable under R.S.43:21-1 et seq., or any federal program
38 administered by this State, or under the unemployment
39 compensation law of another state or any federal unemployment
40 benefit or allowance program administered by another state under
41 an agreement with the United States Secretary of Labor, if the other
42 state has in effect a reciprocal agreement with the United States
43 Secretary of Labor as authorized by subsection (g) of 42
44 U.S.C.s.503, and if the United States agrees, as provided in the
45 reciprocal agreement with this State entered into under subsection
46 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits
47 as determined under subsection (d) of R.S.43:21-16 and
48 overpayments as determined under the unemployment

1 compensation law of another state which has in effect a reciprocal
2 agreement with the United States Secretary of Labor as authorized
3 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset
4 from benefits or allowances otherwise payable under a federal
5 program administered by this State or another state under an
6 agreement with the United States Secretary of Labor.

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

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

42 (f) Any employing unit or any officer or agent of an employing
43 unit or any other person who aids and abets any person to obtain
44 any sum of benefits under this chapter to which he is not entitled, or
45 a larger amount as benefits than that to which he is justly entitled,
46 shall be liable for each offense upon conviction before any Superior
47 Court or municipal court, to a fine not to exceed \$1,000.00 or by
48 imprisonment for a term not to exceed 90 days, or both, at the

1 discretion of the court. The fine upon conviction shall be payable to
2 the unemployment compensation auxiliary fund. Any penalties
3 imposed by this subsection shall be in addition to those otherwise
4 prescribed in this chapter (R.S.43:21-1 et seq.).

5 (g) There shall be created in the Division of Unemployment and
6 Temporary Disability Insurance of the Department of Labor and
7 Workforce Development of the State of New Jersey an investigative
8 staff for the purpose of investigating violations referred to in this
9 section and enforcing the provisions thereof.

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

25 (cf: P.L.2010, c.82, s.2)

26

27 2. This act shall take effect immediately.

28

29

30

STATEMENT

31

32 This bill requires that the Department of Labor and Workforce
33 Development immediately deposit any amount recovered from the
34 assessment of penalties related to the payment of unemployment
35 benefits obtained fraudulently by an individual under the State's
36 unemployment compensation program. The bill provides that a
37 recovered fine of 15 percent of the amount fraudulently obtained by
38 an individual will be immediately deposited into the State
39 unemployment compensation fund (UI trust fund), and a recovered
40 fine of 10 percent of the amount fraudulently obtained will be
41 deposited into the unemployment compensation auxiliary fund.

42 Currently, the penalty assessed against an individual that obtains
43 benefits fraudulently is \$20, or 25 percent of the amount
44 fraudulently obtained, whichever is greater, and the recovered fine
45 is fully deposited into the unemployment compensation auxiliary
46 fund. The bill revises the penalty so that it is strictly 25 percent of
47 the amount fraudulently obtained, and requires that the recovered
48 fine be deposited in the UI trust fund and the auxiliary fund.

- 1 The bill also requires that the same assessment of penalties and
2 deposit of penalties into the State's UI trust fund and auxiliary fund
3 apply to benefits obtained fraudulently by individuals under any
4 federal unemployment compensation program, including:
- 5 1. Unemployment compensation for federal civilian employees,
 - 6 2. Unemployment compensation for ex-service members,
 - 7 3. Trade readjustment allowances, disaster unemployment
8 assistance,
 - 9 4. Any federal temporary extension of unemployment
10 compensation,
 - 11 5. Any federal program that increases the weekly amount of
12 unemployment compensation payable to individuals, and
 - 13 6. Any other federal program providing for the payment of
14 unemployment compensation.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4186

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4186.

The bill revises the assessment of penalties for certain fraudulently obtained unemployment benefits and modifies the dedication of recovered penalties.

The bill requires the Department of Labor and Workforce Development to immediately deposit any amount recovered from the assessment of penalties related to the payment of unemployment benefits obtained fraudulently by an individual under the State's unemployment compensation program. The bill provides that a recovered fine of 15 percent of the amount fraudulently obtained by an individual will be immediately deposited into the State unemployment compensation fund (UI trust fund), and a recovered fine of 10 percent of the amount fraudulently obtained will be deposited into the unemployment compensation auxiliary fund.

Currently, the penalty assessed against an individual that obtains benefits fraudulently is \$20, or 25 percent of the amount fraudulently obtained, whichever is greater, and the recovered fine is fully deposited into the unemployment compensation auxiliary fund. The bill revises the penalty so that it is strictly 25 percent of the amount fraudulently obtained, and requires that the recovered fine be deposited in the UI trust fund and the auxiliary fund.

The bill also requires the same assessment of penalties and deposit of penalties into the State's UI trust fund and auxiliary fund apply to benefits obtained fraudulently by individuals under any federal unemployment compensation program, including:

1. Unemployment compensation for federal civilian employees,
2. Unemployment compensation for ex-service members,
3. Trade readjustment allowances,
4. Disaster unemployment assistance,
5. Any federal temporary extension of unemployment compensation,
6. Any federal program that increases the weekly amount of unemployment compensation payable to individuals, and
7. Any other federal program providing for the payment of unemployment compensation.

The bill takes effect immediately upon enactment.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will result in an indeterminate revenue loss to the unemployment compensation auxiliary fund (UCAF) matched by an indeterminate revenue gain for the unemployment compensation fund (UI trust fund).

Currently, a 25 percent penalty is imposed on the total amount of benefits fraudulently obtained by an individual and all recovered penalties are deposited into the UCAF. Under the bill, the penalty dedicated to the UCAF will be reduced to 10 percent of the total amount fraudulently obtained and the penalty dedicated to the UI trust fund will be 15 percent of the total amount obtained.

The UCAF is the repository for all interest and penalties imposed upon employers and individuals for violation of unemployment insurance regulations. Moneys from the UCAF are used for administering the UI trust fund, as well as various other programs as determined by the Commissioner of Labor and Workforce Development.

Without additional information from the Department of Labor and Workforce Development, the OLS notes that it is not possible to determine the total amount of penalties collected from individuals who fraudulently collect benefits each year.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4186
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: JUNE 20, 2013

SUMMARY

- Synopsis:** Concerns assessment of penalties for certain fraudulently obtained unemployment benefits and requires recovered penalties deposited into unemployment compensation fund.
- Type of Impact:** Revenue loss to the unemployment compensation auxiliary fund (UCAF) matched by an equal revenue gain for the unemployment insurance compensation trust fund (UI trust fund).
- Agencies Affected:** Department of Labor and Workforce Development

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 2</u>
Revenue loss – UCAF	Indeterminate – See comments below
Revenue gain – UI trust fund	Indeterminate – See comments below

- Assembly Bill No. 4186 requires that the Department of Labor and Workforce Development assess a 25 percent penalty on an individual who fraudulently obtains unemployment insurance compensation benefits. The bill directs that 15 percent be deposited into the UI trust fund and 10 percent be deposited into the UCAF. Currently, the penalty is 25 percent or \$20, whichever is greater, and is deposited entirely in the UCAF.
- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate revenue loss to the UCAF due to the diversion of the penalty revenue from the UCAF to the UI trust fund.
- Furthermore, the OLS estimates that this bill will result in an indeterminate revenue gain for the UI trust fund from the portion of the penalty that will now be directed to the UI trust fund.

BILL DESCRIPTION

Assembly Bill No. 4186 of 2013 requires that the Department of Labor and Workforce Development immediately deposit any amount recovered from the assessment of penalties related to the payment of unemployment benefits obtained fraudulently by an individual under the State's unemployment compensation program. The bill provides that a recovered fine of 15 percent of the amount fraudulently obtained by an individual will be immediately deposited into the UI trust fund, and a recovered fine of 10 percent of the amount fraudulently obtained will be deposited into the UCAF.

Currently, the penalty assessed against an individual that obtains benefits fraudulently is \$20, or 25 percent of the amount fraudulently obtained, whichever is greater, and the recovered fine is fully deposited into the UCAF. The bill revises the penalty so that it is strictly 25 percent of the amount fraudulently obtained, and requires that the recovered fine be deposited in the UI trust fund and the UCAF.

The bill also requires that the same assessment of penalties and deposit of penalties into the State's UI trust fund and the UCAF apply to benefits obtained fraudulently by individuals under any federal unemployment compensation program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that Assembly Bill No. 4186 will result in an indeterminate revenue loss to the UCAF matched by an indeterminate revenue gain for the UI trust fund.

Currently, a 25 percent penalty is imposed on the total amount of benefits fraudulently obtained by an individual and all recovered penalties are deposited into the UCAF. Under the bill, the penalty dedicated to the UCAF will be reduced from 25 percent to 10 percent of the total amount fraudulently obtained and the penalty dedicated to the UI trust fund will be 15 percent of the total fraudulently obtained.

The UCAF is the repository for all interest and penalties imposed upon employers and individuals for violation of unemployment insurance regulations. Moneys from the UCAF are to be used for the cost of the administration of the UI trust fund, as well as various other programs as determined by the commissioner.

Without further information from the department, it is not possible to determine with any certainty the total amount of penalties collected from individuals who fraudulently collect benefits each year.

Section: Commerce, Labor and Industry

Analyst: Robin C. Ford
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).