

17:33A-3 to 17:33A-5 et al
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2021 **CHAPTER:** 167

NJSA: 17:33A-3 to 17:33A-5 et al (Streamlines identification of employee misclassification.)

BILL NO: A5892 (Substituted for S3922)

SPONSOR(S) Sumter, Shavonda E. and others

DATE INTRODUCED: 6/9/2021

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** 6/21/2021

SENATE: 6/30/2021

DATE OF APPROVAL: 7/8/2021

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced bill enacted) Yes

A5892

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(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: No

S3922

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(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: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

Johnson, Brent. "New laws to benefit misclassified workers, the self-employed." *South Jersey Times (NJ)*, July 9, 2021: 004.

RH/CL

P.L. 2021, CHAPTER 167, *approved July 8, 2021*
Assembly, No. 5892

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

3

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

6

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

9 3. As used in this act:

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

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

14 "Commissioner" means the Commissioner of Banking and
15 Insurance.

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

20 "Insurance company" means:

21 a. Any corporation, association, partnership, reciprocal
22 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or
23 other person engaged in the business of insurance pursuant to
24 Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.),
25 or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-
26 1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 "Statement" includes, but is not limited to, any application,
34 writing, notice, expression, statement, proof of loss, bill of lading,
35 receipt, invoice, account, estimate of property damage, bill for
36 services, diagnosis, prescription, hospital or physician record, X-
37 ray, test result or other evidence of loss, injury or expense.
38 (cf: P.L.2010, c.32, s.2)

39

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

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

43 (1) Presents or causes to be presented any written or oral
44 statement as part of, or in support of or opposition to, a claim for
45 payment or other benefit pursuant to an insurance policy or the
46 "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174

- 1 (C.39:6-61 et seq.), knowing that the statement contains any false or
2 misleading information concerning any fact or thing material to the
3 claim; or
- 4 (2) Prepares or makes any written or oral statement that is
5 intended to be presented to any insurance company, the Unsatisfied
6 Claim and Judgment Fund, or any claimant thereof in connection
7 with, or in support of or opposition to any claim for payment or
8 other benefit pursuant to an insurance policy or the "Unsatisfied
9 Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et
10 seq.), knowing that the statement contains any false or misleading
11 information concerning any fact or thing material to the claim; or
- 12 (3) Conceals or knowingly fails to disclose the occurrence of an
13 event which affects any person's initial or continued right or
14 entitlement to (a) any insurance benefit or payment or (b) the
15 amount of any benefit or payment to which the person is entitled;
- 16 (4) Prepares or makes any written or oral statement, intended to
17 be presented to any insurance company or producer for the purpose
18 of obtaining:
- 19 (a) a motor vehicle insurance policy, that the person to be
20 insured maintains a principal residence in this State when, in fact,
21 that person's principal residence is in a state other than this State; or
- 22 (b) an insurance policy, knowing that the statement contains any
23 false or misleading information concerning any fact or thing
24 material to an insurance application or contract;
- 25 (5) Conceals or knowingly fails to disclose any evidence,
26 written or oral, which may be relevant to a finding that a violation
27 of the provisions of paragraph (4) of this subsection a. has or has
28 not occurred; or
- 29 (6) Prepares, presents or causes to be presented to any insurer or
30 other person, or demands or requires the issuance of, a certificate of
31 insurance that contains any false or misleading information
32 concerning the policy of insurance to which the certificate makes
33 reference, or assists, abets, solicits or conspires with another to do
34 any of these acts. As used in this paragraph, "certificate of
35 insurance" means a document or instrument, regardless of how
36 titled or described, that is, or purports to be, prepared or issued by
37 an insurer or insurance producer as evidence of property or casualty
38 insurance coverage. The term shall not include a policy of
39 insurance, insurance binder, policy endorsement, or automobile
40 insurance identification or information card.
- 41 b. A person or practitioner violates this act if he knowingly
42 assists, conspires with, or urges any person or practitioner to violate
43 any of the provisions of this act.
- 44 c. A person or practitioner violates this act if, due to the
45 assistance, conspiracy or urging of any person or practitioner, he
46 knowingly benefits, directly or indirectly, from the proceeds
47 derived from a violation of this act.

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

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

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

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

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

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

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

45 (1) Makes a false or misleading statement, representation, or
46 submission, including failing to properly classify employees in
47 violation of state wage, benefit and tax laws as defined in section 1

1 of P.L.2009, c.194 (C.34:1A-1.11), for the purpose of evading the
2 full payment of insurance benefits or premiums; or
3 (2) Coerces, solicits, or encourages, or employs, contracts, or
4 otherwise conspires with a person to coerce, solicit, or encourage,
5 any individual to make a false or misleading statement,
6 representation or submission concerning any fact that is material to
7 a claim for insurance benefits, or the payment of insurance benefits
8 or insurance premiums, for the purpose of wrongfully obtaining the
9 benefits or of evading the full payment of the insurance benefits or
10 insurance premiums.

11 (cf: P.L.2015, c.195, s.10)

12

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

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

18 (1) bring a civil action in accordance with subsection b. of this
19 section; or

20 (2) levy a civil administrative penalty and order restitution in
21 accordance with subsection c. of this section.

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

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

42 c. The commissioner is authorized to assess a civil and
43 administrative penalty of not more than \$5,000 for the first
44 violation, \$10,000 for the second violation and \$15,000 for each
45 subsequent violation of any provision of P.L.1983, c.320
46 (C.17:33A-1 et seq.) and to order restitution to any insurance
47 company or other person who has suffered a loss as a result of a

1 violation of P.L.1983, c.320 (C.17:33A-1 et seq.), provided that if
2 the provision violated was subsection g. of section 4 of P.L.1983,
3 c.320 (C.17:33A-4), the commissioner shall assess a civil and
4 administrative penalty of \$5,000 for the first violation, \$10,000 for
5 the second violation and \$15,000 for each subsequent violation and
6 shall order restitution to any insurance company or other person
7 who has suffered a loss as a result of a violation of subsection g. of
8 section 4 of P.L.1983, c.320 (C.17:33A-1 et seq.) . No assessment
9 shall be levied pursuant to this subsection until the violator has been
10 notified by certified mail or personal service. The notice shall
11 contain a concise statement of facts providing the basis for the
12 determination of a violation of P.L.1983, c.320 (C.17:33A-1 et
13 seq.), the provisions of that act violated, a statement of the amount
14 of civil penalties assessed and a statement of the party's right to a
15 hearing in accordance with the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have
17 20 calendar days from receipt of the notice within which to deliver
18 to the commissioner a written request for a hearing containing an
19 answer to the statement of facts contained in the notice. After the
20 hearing and upon a finding that a violation has occurred, the
21 commissioner may issue a final order assessing up to the amount of
22 the penalty in the notice, restitution, and costs of prosecution,
23 including attorneys' fees. If no hearing is requested, the notice shall
24 become a final order after the expiration of the 20-day period.
25 Payment of the assessment is due when a final order is issued or the
26 notice becomes a final order.

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

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

1 consent agreement preclude referral to law enforcement for
2 consideration of criminal prosecution.

3 e. The New Jersey Automobile Full Insurance Underwriting
4 Association and Market Transition Facility Auxiliary Fund
5 (hereinafter referred to as the "fund") is established as a nonlapsing,
6 revolving fund into which shall be deposited all revenues from the
7 civil penalties imposed pursuant to this section. Interest received on
8 moneys in the fund shall be credited to the fund. The fund shall be
9 administered by the Commissioner of Banking and Insurance and
10 shall be used to help defray the operating expenses of the New
11 Jersey Automobile Full Insurance Underwriting Association created
12 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to
13 help defray the operating expenses of the Market Transition Facility
14 created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).
15 (cf: P.L.1997, c.151, s.4)

16

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

19 9. a. (1) Any person who believes that a violation of this act
20 has been or is being made shall notify the bureau and the Office of
21 the Insurance Fraud Prosecutor immediately after discovery of the
22 alleged violation of this act and shall send to the bureau and office,
23 on a form and in a manner jointly prescribed by the commissioner
24 and the Insurance Fraud Prosecutor, the information requested and
25 such additional information relative to the alleged violation as the
26 bureau or office may require. The bureau and the office shall
27 jointly review the reports and select those alleged violations as may
28 require further investigation by the office for possible criminal
29 prosecution, and those that may warrant investigation and possible
30 civil action or enforcement proceeding by the bureau in lieu of or in
31 addition to criminal prosecution. The bureau and office may
32 consult, as necessary, the Department of Labor and Workforce
33 Development to assist with the investigation of the failure to
34 properly classify employees in violation of any provision of State
35 wage, benefit and tax laws as defined in section 1 of P.L.2009,
36 c.194 (C.34:1A-1.11) for the purpose of wrongfully obtaining the
37 benefits or of evading the full payment of the insurance benefits or
38 insurance premiums. The Insurance Fraud Prosecutor and the
39 assistant commissioner shall meet monthly to ensure that reports are
40 handled in an expedited fashion.

41 (2) Whenever the Bureau of Fraud Deterrence or any employee
42 of the bureau obtains information or evidence of a reasonable
43 possibility of criminal wrongdoing not previously known or
44 disclosed to the Office of the Insurance Fraud Prosecutor, the
45 bureau shall immediately refer that information or evidence to that
46 office. In determining whether a referral to the office is appropriate,
47 the bureau shall utilize appropriate levels of internal review, which

1 shall include but not be limited to approval at the assistant
2 commissioner level. Upon referral, the bureau shall provide the
3 office with all documents related to the referral consistent with
4 section 39 of P.L.1998, c.21 (C.17:33A-23).

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

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

15 (cf: P.L.2010, c.32, s.4)

16

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

18 54:50-8. a. The records and files of the director respecting the
19 administration of the State Uniform Tax Procedure Law or of any
20 State tax law shall be considered confidential and privileged and
21 neither the director nor any employee engaged in the administration
22 thereof or charged with the custody of any such records or files, nor
23 any former officer or employee, nor any person who may have
24 secured information therefrom under subsection d., e., f., g., p., q.,
25 **【or】** r., or s. of R.S.54:50-9 or any other provision of State law,
26 shall divulge, disclose, use for their own personal advantage, or
27 examine for any reason other than a reason necessitated by the
28 performance of official duties any information obtained from the
29 said records or files or from any examination or inspection of the
30 premises or property of any person. Neither the director nor any
31 employee engaged in such administration or charged with the
32 custody of any such records or files shall be required to produce any
33 of them for the inspection of any person or for use in any action or
34 proceeding except when the records or files or the facts shown
35 thereby are directly involved in an action or proceeding under the
36 provisions of the State Uniform Tax Procedure Law or of the State
37 tax law affected, or where the determination of the action or
38 proceeding will affect the validity or amount of the claim of the
39 State under some State tax law, or in any lawful proceeding for the
40 investigation and prosecution of any violation of the criminal
41 provisions of the State Uniform Tax Procedure Law or of any State
42 tax law.

43 b. The prohibitions of this section, against unauthorized
44 disclosure, use or examination by any present or former officer or
45 employee of this State or any other individual having custody of
46 such information obtained pursuant to the explicit authority of State

1 law, shall specifically include, without limitation, violations
2 involving the divulgence or examination of any information from or
3 any copy of a federal return or federal return information required
4 by New Jersey law to be attached to or included in any New Jersey
5 return. Any person violating this section by divulging, disclosing or
6 using information shall be guilty of a crime of the fourth degree.
7 Any person violating this section by examining records or files for
8 any reason other than a reason necessitated by the performance of
9 official duties shall be guilty of a disorderly persons offense.

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

18 (cf: P.L.2020, c.156, s.125)

19

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

21 54:50-9. Nothing herein contained shall be construed to prevent:

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

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

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

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

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

41 f. The furnishing, at the discretion of the director, of any
42 information contained in tax reports or returns or any audit thereof
43 or the report of any investigation made with respect thereto, filed
44 pursuant to the tax laws, to the taxing officials of any other state,
45 the District of Columbia, the United States and the territories
46 thereof, providing said jurisdictions grant like privileges to this

1 State and providing such information is to be used for tax purposes
2 only;

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

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

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

22 j. The furnishing by the director to the Director of the Division
23 of Alcoholic Beverage Control in the Department of Law and
24 Public Safety any information contained in tax information
25 statements, reports or returns or any audit thereof or a report of any
26 investigation made with respect thereto, as may be relevant, in the
27 discretion of the director, in any proceeding conducted for the
28 issuance, suspension or revocation of any license authorized
29 pursuant to Title 33 of the Revised Statutes;

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

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

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

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

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

13 p. The furnishing at the discretion of the director of employer
14 provided wage and tax withholding information contained in tax
15 reports or returns filed pursuant to N.J.S.54A:7-2, 54A:7-4 and
16 54A:7-7, to the designated municipal officer of a municipality
17 authorized to impose an employer payroll tax pursuant to the
18 provisions of Article 5 (Employer Payroll Tax) of the "Local Tax
19 Authorization Act," P.L.1970, c.326 (C.40:48C-14 et seq.), for the
20 limited purpose of verifying the payroll information reported by
21 employers subject to the employer payroll tax;

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

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

39 s. The furnishing by the director to the Commissioner of
40 Banking and Insurance of any information, including, but not
41 limited to, tax information statements, reports, audit files, returns,
42 or reports of any investigation for the purpose of assisting in
43 investigations pursuant to any insurance fraud investigation as
44 enumerated in P.L.1983, c.320 (C.17:33A-1 et seq.).

45 (cf: P.L.2020, c.156, s.126)

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

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STATEMENT

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7 This bill streamlines the identification of employee
8 misclassification. Specifically, the bill makes misclassifying
9 employees for the purpose of evading payment of insurance
10 premiums a violation of the New Jersey Insurance Fraud Prevention
11 Act. Additionally, the bill specifies penalties for fraud when a
12 misclassification occurs. The bill provides additional resources to
13 DOBI to investigate misclassification as a violation of the New
14 Jersey Insurance Fraud Prevention Act, including consultation by
15 the Bureau of Fraud Deterrence with the Department of Labor and
16 Workforce Development and the authorization of the release of tax
17 information to the Commissioner of Banking and Insurance for the
18 purpose of insurance fraud investigations.

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Streamlines identification of employee misclassification.

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.

ASSEMBLY, No. 5892

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 9, 2021

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

**Assemblyman Verrelli, Assemblywoman Murphy, Senators Singleton,
Greenstein and Turner**

SYNOPSIS

Streamlines identification of employee misclassification.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2021)

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

3

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

6

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

9 3. As used in this act:

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

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

14 "Commissioner" means the Commissioner of Banking and
15 Insurance.

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

20 "Insurance company" means:

21 a. Any corporation, association, partnership, reciprocal
22 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or
23 other person engaged in the business of insurance pursuant to
24 Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.),
25 or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-
26 1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (cf: P.L.2010, c.32, s.2)

36

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

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

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

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

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

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

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

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

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

26 (6) Prepares, presents or causes to be presented to any insurer or
27 other person, or demands or requires the issuance of, a certificate of
28 insurance that contains any false or misleading information
29 concerning the policy of insurance to which the certificate makes
30 reference, or assists, abets, solicits or conspires with another to do
31 any of these acts. As used in this paragraph, "certificate of
32 insurance" means a document or instrument, regardless of how
33 titled or described, that is, or purports to be, prepared or issued by
34 an insurer or insurance producer as evidence of property or casualty
35 insurance coverage. The term shall not include a policy of
36 insurance, insurance binder, policy endorsement, or automobile
37 insurance identification or information card.

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

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

45 d. A person or practitioner who is the owner, administrator or
46 employee of any hospital violates this act if he knowingly allows
47 the use of the facilities of the hospital by any person in furtherance

1 of a scheme or conspiracy to violate any of the provisions of this
2 act.

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

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

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

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

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

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

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

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

9 (cf: P.L.2015, c.195, s.10)

10

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

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

16 (1) bring a civil action in accordance with subsection b. of this
17 section; or

18 (2) levy a civil administrative penalty and order restitution in
19 accordance with subsection c. of this section.

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

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

40 c. The commissioner is authorized to assess a civil and
41 administrative penalty of not more than \$5,000 for the first
42 violation, \$10,000 for the second violation and \$15,000 for each
43 subsequent violation of any provision of P.L.1983, c.320
44 (C.17:33A-1 et seq.) and to order restitution to any insurance
45 company or other person who has suffered a loss as a result of a
46 violation of P.L.1983, c.320 (C.17:33A-1 et seq.), provided that if
47 the provision violated was subsection g. of section 4 of P.L.1983,

1 c.320 (C.17:33A-4), the commissioner shall assess a civil and
2 administrative penalty of \$5,000 for the first violation, \$10,000 for
3 the second violation and \$15,000 for each subsequent violation and
4 shall order restitution to any insurance company or other person
5 who has suffered a loss as a result of a violation of subsection g. of
6 section 4 of P.L.1983, c.320 (C.17:33A-1 et seq.) . No assessment
7 shall be levied pursuant to this subsection until the violator has been
8 notified by certified mail or personal service. The notice shall
9 contain a concise statement of facts providing the basis for the
10 determination of a violation of P.L.1983, c.320 (C.17:33A-1 et
11 seq.), the provisions of that act violated, a statement of the amount
12 of civil penalties assessed and a statement of the party's right to a
13 hearing in accordance with the "Administrative Procedure Act,"
14 P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have
15 20 calendar days from receipt of the notice within which to deliver
16 to the commissioner a written request for a hearing containing an
17 answer to the statement of facts contained in the notice. After the
18 hearing and upon a finding that a violation has occurred, the
19 commissioner may issue a final order assessing up to the amount of
20 the penalty in the notice, restitution, and costs of prosecution,
21 including attorneys' fees. If no hearing is requested, the notice shall
22 become a final order after the expiration of the 20-day period.
23 Payment of the assessment is due when a final order is issued or the
24 notice becomes a final order.

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

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

1 e. The New Jersey Automobile Full Insurance Underwriting
2 Association and Market Transition Facility Auxiliary Fund
3 (hereinafter referred to as the "fund") is established as a nonlapsing,
4 revolving fund into which shall be deposited all revenues from the
5 civil penalties imposed pursuant to this section. Interest received on
6 moneys in the fund shall be credited to the fund. The fund shall be
7 administered by the Commissioner of Banking and Insurance and
8 shall be used to help defray the operating expenses of the New
9 Jersey Automobile Full Insurance Underwriting Association created
10 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to
11 help defray the operating expenses of the Market Transition Facility
12 created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).
13 (cf: P.L.1997, c.151, s.4)

14

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

17 9. a. (1) Any person who believes that a violation of this act
18 has been or is being made shall notify the bureau and the Office of
19 the Insurance Fraud Prosecutor immediately after discovery of the
20 alleged violation of this act and shall send to the bureau and office,
21 on a form and in a manner jointly prescribed by the commissioner
22 and the Insurance Fraud Prosecutor, the information requested and
23 such additional information relative to the alleged violation as the
24 bureau or office may require. The bureau and the office shall
25 jointly review the reports and select those alleged violations as may
26 require further investigation by the office for possible criminal
27 prosecution, and those that may warrant investigation and possible
28 civil action or enforcement proceeding by the bureau in lieu of or in
29 addition to criminal prosecution. The bureau and office may
30 consult, as necessary, the Department of Labor and Workforce
31 Development to assist with the investigation of the failure to
32 properly classify employees in violation of any provision of State
33 wage, benefit and tax laws as defined in section 1 of P.L.2009,
34 c.194 (C.34:1A-1.11) for the purpose of wrongfully obtaining the
35 benefits or of evading the full payment of the insurance benefits or
36 insurance premiums. The Insurance Fraud Prosecutor and the
37 assistant commissioner shall meet monthly to ensure that reports are
38 handled in an expedited fashion.

39 (2) Whenever the Bureau of Fraud Deterrence or any employee
40 of the bureau obtains information or evidence of a reasonable
41 possibility of criminal wrongdoing not previously known or
42 disclosed to the Office of the Insurance Fraud Prosecutor, the
43 bureau shall immediately refer that information or evidence to that
44 office. In determining whether a referral to the office is appropriate,
45 the bureau shall utilize appropriate levels of internal review, which
46 shall include but not be limited to approval at the assistant
47 commissioner level. Upon referral, the bureau shall provide the

1 office with all documents related to the referral consistent with
2 section 39 of P.L.1998, c.21 (C.17:33A-23).

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

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

13 (cf: P.L.2010, c.32, s.4)

14

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

16 54:50-8. a. The records and files of the director respecting the
17 administration of the State Uniform Tax Procedure Law or of any
18 State tax law shall be considered confidential and privileged and
19 neither the director nor any employee engaged in the administration
20 thereof or charged with the custody of any such records or files, nor
21 any former officer or employee, nor any person who may have
22 secured information therefrom under subsection d., e., f., g., p., q.,
23 **[or]** r., or s. of R.S.54:50-9 or any other provision of State law,
24 shall divulge, disclose, use for their own personal advantage, or
25 examine for any reason other than a reason necessitated by the
26 performance of official duties any information obtained from the
27 said records or files or from any examination or inspection of the
28 premises or property of any person. Neither the director nor any
29 employee engaged in such administration or charged with the
30 custody of any such records or files shall be required to produce any
31 of them for the inspection of any person or for use in any action or
32 proceeding except when the records or files or the facts shown
33 thereby are directly involved in an action or proceeding under the
34 provisions of the State Uniform Tax Procedure Law or of the State
35 tax law affected, or where the determination of the action or
36 proceeding will affect the validity or amount of the claim of the
37 State under some State tax law, or in any lawful proceeding for the
38 investigation and prosecution of any violation of the criminal
39 provisions of the State Uniform Tax Procedure Law or of any State
40 tax law.

41 b. The prohibitions of this section, against unauthorized
42 disclosure, use or examination by any present or former officer or
43 employee of this State or any other individual having custody of
44 such information obtained pursuant to the explicit authority of State
45 law, shall specifically include, without limitation, violations
46 involving the divulgence or examination of any information from or

1 any copy of a federal return or federal return information required
2 by New Jersey law to be attached to or included in any New Jersey
3 return. Any person violating this section by divulging, disclosing or
4 using information shall be guilty of a crime of the fourth degree.
5 Any person violating this section by examining records or files for
6 any reason other than a reason necessitated by the performance of
7 official duties shall be guilty of a disorderly persons offense.

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

16 (cf: P.L.2020, c.156, s.125)

17

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

19 54:50-9. Nothing herein contained shall be construed to prevent:

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

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

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

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

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

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

- 1 g. The furnishing, at the discretion of the director, of any
2 material information disclosed by the records or files to any law
3 enforcing authority of this State who shall be charged with the
4 investigation or prosecution of any violation of the criminal
5 provisions of this subtitle or of any State tax law;
- 6 h. The furnishing by the director to the State agency
7 responsible for administering the Child Support Enforcement
8 program pursuant to Title IV-D of the federal Social Security Act,
9 Pub.L.93-647 (42 U.S.C. s.651 et seq.), with the names, home
10 addresses, social security numbers and sources of income and assets
11 of all absent parents who are certified by that agency as being
12 required to pay child support, upon request by the State agency and
13 pursuant to procedures and in a form prescribed by the director;
- 14 i. The furnishing by the director to the Board of Public
15 Utilities any information contained in tax information statements,
16 reports or returns or any audit thereof or a report of any
17 investigation made with respect thereto, as may be necessary for the
18 administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and
19 P.L.1997, c.162 (C.54:10A-5.25 et al.);
- 20 j. The furnishing by the director to the Director of the Division
21 of Alcoholic Beverage Control in the Department of Law and
22 Public Safety any information contained in tax information
23 statements, reports or returns or any audit thereof or a report of any
24 investigation made with respect thereto, as may be relevant, in the
25 discretion of the director, in any proceeding conducted for the
26 issuance, suspension or revocation of any license authorized
27 pursuant to Title 33 of the Revised Statutes;
- 28 k. The inspection by the Attorney General or other legal
29 representative of this State of the reports or files of any tobacco
30 product manufacturer, as defined in section 2 of P.L.1999, c.148
31 (C.52:4D-2), for any period in which that tobacco product
32 manufacturer was not or is not in compliance with subsection a. of
33 section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed
34 distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-
35 2), for the purpose of facilitating the administration of the
36 provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);
- 37 l. The furnishing, at the discretion of the director, of
38 information as to whether a contractor or subcontractor holds a
39 valid business registration as defined in section 1 of P.L.2001, c.134
40 (C.52:32-44);
- 41 m. The furnishing by the director to a State agency as defined in
42 section 1 of P.L.1995, c.158 (C.54:50-24) the names of licensees
43 subject to suspension for non-payment of State tax indebtedness
44 pursuant to P.L.2004, c.58 (C.54:50-26.1 et al.);
- 45 n. The release to the United States Department of the Treasury,
46 Bureau of Financial Management Service, or its successor of
47 relevant taxpayer information for purposes of implementing a

1 reciprocal collection and offset of indebtedness agreement entered
2 into between the State of New Jersey and the federal government
3 pursuant to section 1 of P.L.2006, c.32 (C.54:49-12.7);

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

10 p. The furnishing at the discretion of the director of employer
11 provided wage and tax withholding information contained in tax
12 reports or returns filed pursuant to N.J.S.54A:7-2, 54A:7-4 and
13 54A:7-7, to the designated municipal officer of a municipality
14 authorized to impose an employer payroll tax pursuant to the
15 provisions of Article 5 (Employer Payroll Tax) of the "Local Tax
16 Authorization Act," P.L.1970, c.326 (C.40:48C-14 et seq.), for the
17 limited purpose of verifying the payroll information reported by
18 employers subject to the employer payroll tax;

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

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

36 s. The furnishing by the director to the Commissioner of
37 Banking and Insurance of any information, including, but not
38 limited to, tax information statements, reports, audit files, returns,
39 or reports of any investigation for the purpose of assisting in
40 investigations pursuant to any insurance fraud investigation as
41 enumerated in P.L.1983, c.320 (C.17:33A-1 et seq.).

42 (cf: P.L.2020, c.156, s.126)

43

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

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STATEMENT

This bill streamlines the identification of employee misclassification. Specifically, the bill makes misclassifying employees for the purpose of evading payment of insurance premiums a violation of the New Jersey Insurance Fraud Prevention Act. Additionally, the bill specifies penalties for fraud when a misclassification occurs. The bill provides additional resources to DOBI to investigate misclassification as a violation of the New Jersey Insurance Fraud Prevention Act, including consultation by the Bureau of Fraud Deterrence with the Department of Labor and Workforce Development and the authorization of the release of tax information to the Commissioner of Banking and Insurance for the purpose of insurance fraud investigations.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5892

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5892.

This bill streamlines the identification of employee misclassification. Specifically, the bill makes misclassifying employees for the purpose of evading payment of insurance premiums a violation of the New Jersey Insurance Fraud Prevention Act. Additionally, the bill specifies penalties for fraud when a misclassification occurs. The bill provides additional resources to DOBI to investigate misclassification as a violation of the New Jersey Insurance Fraud Prevention Act, including consultation by the Bureau of Fraud Deterrence with the Department of Labor and Workforce Development and the authorization of the release of tax information to the Commissioner of Banking and Insurance for the purpose of insurance fraud investigations.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

SENATE, No. 3922

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

Senators Singleton, Greenstein and Turner

SYNOPSIS

Streamlines identification of employee misclassification.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2021)

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

3

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

6

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

9 3. As used in this act:

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

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

14 "Commissioner" means the Commissioner of Banking and
15 Insurance.

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

20 "Insurance company" means:

21 a. Any corporation, association, partnership, reciprocal
22 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or
23 other person engaged in the business of insurance pursuant to
24 Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.),
25 or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-
26 1 et seq.);

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

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

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

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

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

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

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

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

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

45 k. Any health maintenance organization operating pursuant to

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 P.L.1973, c.337 (C.26:2J-1 et seq.).

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

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

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

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

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

26 "Statement" includes, but is not limited to, any application,
27 writing, notice, expression, statement, proof of loss, bill of lading,
28 receipt, invoice, account, estimate of property damage, bill for
29 services, diagnosis, prescription, hospital or physician record, X-
30 ray, test result or other evidence of loss, injury or expense.
31 (cf: P.L.2010, c.32, s.2)

32

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

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

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

43 (2) Prepares or makes any written or oral statement that is
44 intended to be presented to any insurance company, the Unsatisfied
45 Claim and Judgment Fund, or any claimant thereof in connection
46 with, or in support of or opposition to any claim for payment or
47 other benefit pursuant to an insurance policy or the "Unsatisfied
48 Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et

- 1 seq.), knowing that the statement contains any false or misleading
2 information concerning any fact or thing material to the claim; or
- 3 (3) Conceals or knowingly fails to disclose the occurrence of an
4 event which affects any person's initial or continued right or
5 entitlement to (a) any insurance benefit or payment or (b) the
6 amount of any benefit or payment to which the person is entitled;
- 7 (4) Prepares or makes any written or oral statement, intended to
8 be presented to any insurance company or producer for the purpose
9 of obtaining:
- 10 (a) a motor vehicle insurance policy, that the person to be
11 insured maintains a principal residence in this State when, in fact,
12 that person's principal residence is in a state other than this State; or
- 13 (b) an insurance policy, knowing that the statement contains any
14 false or misleading information concerning any fact or thing
15 material to an insurance application or contract;
- 16 (5) Conceals or knowingly fails to disclose any evidence,
17 written or oral, which may be relevant to a finding that a violation
18 of the provisions of paragraph (4) of this subsection a. has or has
19 not occurred; or
- 20 (6) Prepares, presents or causes to be presented to any insurer or
21 other person, or demands or requires the issuance of, a certificate of
22 insurance that contains any false or misleading information
23 concerning the policy of insurance to which the certificate makes
24 reference, or assists, abets, solicits or conspires with another to do
25 any of these acts. As used in this paragraph, "certificate of
26 insurance" means a document or instrument, regardless of how
27 titled or described, that is, or purports to be, prepared or issued by
28 an insurer or insurance producer as evidence of property or casualty
29 insurance coverage. The term shall not include a policy of
30 insurance, insurance binder, policy endorsement, or automobile
31 insurance identification or information card.
- 32 b. A person or practitioner violates this act if he knowingly
33 assists, conspires with, or urges any person or practitioner to violate
34 any of the provisions of this act.
- 35 c. A person or practitioner violates this act if, due to the
36 assistance, conspiracy or urging of any person or practitioner, he
37 knowingly benefits, directly or indirectly, from the proceeds
38 derived from a violation of this act.
- 39 d. A person or practitioner who is the owner, administrator or
40 employee of any hospital violates this act if he knowingly allows
41 the use of the facilities of the hospital by any person in furtherance
42 of a scheme or conspiracy to violate any of the provisions of this
43 act.
- 44 e. A person or practitioner violates this act if, for pecuniary
45 gain, for himself or another, he directly or indirectly solicits any
46 person or practitioner to engage, employ or retain either himself or
47 any other person to manage, adjust or prosecute any claim or cause
48 of action, against any person, for damages for negligence, or, for
49 pecuniary gain, for himself or another, directly or indirectly solicits

1 other persons to bring causes of action to recover damages for
2 personal injuries or death, or for pecuniary gain, for himself or
3 another, directly or indirectly solicits other persons to make a claim
4 for personal injury protection benefits pursuant to P.L.1972, c.70
5 (C.39:6A-1 et seq.); provided, however, that this subsection shall
6 not apply to any conduct otherwise permitted by law or by rule of
7 the Supreme Court.

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

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

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

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

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

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

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

47 (cf: P.L.2015, c.195, s.10)

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

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

4 (1) bring a civil action in accordance with subsection b. of this
5 section; or

6 (2) levy a civil administrative penalty and order restitution in
7 accordance with subsection c. of this section.

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

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

28 c. The commissioner is authorized to assess a civil and
29 administrative penalty of not more than \$5,000 for the first
30 violation, \$10,000 for the second violation and \$15,000 for each
31 subsequent violation of any provision of P.L.1983, c.320
32 (C.17:33A-1 et seq.) and to order restitution to any insurance
33 company or other person who has suffered a loss as a result of a
34 violation of P.L.1983, c.320 (C.17:33A-1 et seq.), provided that if
35 the provision violated was subsection g. of section 4 of P.L.1983,
36 c.320 (C.17:33A-4), the commissioner shall assess a civil and
37 administrative penalty of \$5,000 for the first violation, \$10,000 for
38 the second violation and \$15,000 for each subsequent violation and
39 shall order restitution to any insurance company or other person
40 who has suffered a loss as a result of a violation of subsection g. of
41 section 4 of P.L.1983, c.320 (C.17:33A-1 et seq.) . No assessment
42 shall be levied pursuant to this subsection until the violator has been
43 notified by certified mail or personal service. The notice shall
44 contain a concise statement of facts providing the basis for the
45 determination of a violation of P.L.1983, c.320 (C.17:33A-1 et
46 seq.), the provisions of that act violated, a statement of the amount
47 of civil penalties assessed and a statement of the party's right to a
48 hearing in accordance with the "Administrative Procedure Act,"
49 P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have

1 20 calendar days from receipt of the notice within which to deliver
2 to the commissioner a written request for a hearing containing an
3 answer to the statement of facts contained in the notice. After the
4 hearing and upon a finding that a violation has occurred, the
5 commissioner may issue a final order assessing up to the amount of
6 the penalty in the notice, restitution, and costs of prosecution,
7 including attorneys' fees. If no hearing is requested, the notice shall
8 become a final order after the expiration of the 20-day period.
9 Payment of the assessment is due when a final order is issued or the
10 notice becomes a final order.

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

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

34 e. The New Jersey Automobile Full Insurance Underwriting
35 Association and Market Transition Facility Auxiliary Fund
36 (hereinafter referred to as the "fund") is established as a nonlapsing,
37 revolving fund into which shall be deposited all revenues from the
38 civil penalties imposed pursuant to this section. Interest received on
39 moneys in the fund shall be credited to the fund. The fund shall be
40 administered by the Commissioner of Banking and Insurance and
41 shall be used to help defray the operating expenses of the New
42 Jersey Automobile Full Insurance Underwriting Association created
43 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to
44 help defray the operating expenses of the Market Transition Facility
45 created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).
46 (cf: P.L.1997, c.151, s.4)

47

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

1 9. a. (1) Any person who believes that a violation of this act
2 has been or is being made shall notify the bureau and the Office of
3 the Insurance Fraud Prosecutor immediately after discovery of the
4 alleged violation of this act and shall send to the bureau and office,
5 on a form and in a manner jointly prescribed by the commissioner
6 and the Insurance Fraud Prosecutor, the information requested and
7 such additional information relative to the alleged violation as the
8 bureau or office may require. The bureau and the office shall
9 jointly review the reports and select those alleged violations as may
10 require further investigation by the office for possible criminal
11 prosecution, and those that may warrant investigation and possible
12 civil action or enforcement proceeding by the bureau in lieu of or in
13 addition to criminal prosecution. The bureau and office may
14 consult, as necessary, the Department of Labor and Workforce
15 Development to assist with the investigation of the failure to
16 properly classify employees in violation of any provision of State
17 wage, benefit and tax laws as defined in section 1 of P.L.2009,
18 c.194 (C.34:1A-1.11) for the purpose of wrongfully obtaining the
19 benefits or of evading the full payment of the insurance benefits or
20 insurance premiums. The Insurance Fraud Prosecutor and the
21 assistant commissioner shall meet monthly to ensure that reports are
22 handled in an expedited fashion.

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

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

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

44 (cf: P.L.2010, c.32, s.4)

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

46 54:50-8. a. The records and files of the director respecting the
47 administration of the State Uniform Tax Procedure Law or of any
48 State tax law shall be considered confidential and privileged and
49 neither the director nor any employee engaged in the administration

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

22 b. The prohibitions of this section, against unauthorized
23 disclosure, use or examination by any present or former officer or
24 employee of this State or any other individual having custody of
25 such information obtained pursuant to the explicit authority of State
26 law, shall specifically include, without limitation, violations
27 involving the divulgence or examination of any information from or
28 any copy of a federal return or federal return information required
29 by New Jersey law to be attached to or included in any New Jersey
30 return. Any person violating this section by divulging, disclosing or
31 using information shall be guilty of a crime of the fourth degree.
32 Any person violating this section by examining records or files for
33 any reason other than a reason necessitated by the performance of
34 official duties shall be guilty of a disorderly persons offense.

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

43 (cf: P.L.2020, c.156, s.125)

44

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

46 54:50-9. Nothing herein contained shall be construed to prevent:

47 a. The delivery to a taxpayer or the taxpayer's duly authorized
48 representative of a copy of any report or any other paper filed by

- 1 the taxpayer pursuant to the provisions of this subtitle or of any
2 such State tax law;
- 3 b. The publication of statistics so classified as to prevent the
4 identification of a particular report and the items thereof;
- 5 c. The director, in the director's discretion and subject to
6 reasonable conditions imposed by the director, from disclosing the
7 name and address of any licensee under any State tax law, unless
8 expressly prohibited by such State tax law;
- 9 d. The inspection by the Attorney General or other legal
10 representative of this State of the reports or files relating to the
11 claim of any taxpayer who shall bring an action to review or set
12 aside any tax imposed under any State tax law or against whom an
13 action or proceeding has been instituted in accordance with the
14 provisions thereof;
- 15 e. The examination of said records and files by the
16 Comptroller, State Auditor or State Commissioner of Finance, or by
17 their respective duly authorized agents;
- 18 f. The furnishing, at the discretion of the director, of any
19 information contained in tax reports or returns or any audit thereof
20 or the report of any investigation made with respect thereto, filed
21 pursuant to the tax laws, to the taxing officials of any other state,
22 the District of Columbia, the United States and the territories
23 thereof, providing said jurisdictions grant like privileges to this
24 State and providing such information is to be used for tax purposes
25 only;
- 26 g. The furnishing, at the discretion of the director, of any
27 material information disclosed by the records or files to any law
28 enforcing authority of this State who shall be charged with the
29 investigation or prosecution of any violation of the criminal
30 provisions of this subtitle or of any State tax law;
- 31 h. The furnishing by the director to the State agency
32 responsible for administering the Child Support Enforcement
33 program pursuant to Title IV-D of the federal Social Security Act,
34 Pub.L.93-647 (42 U.S.C. s.651 et seq.), with the names, home
35 addresses, social security numbers and sources of income and assets
36 of all absent parents who are certified by that agency as being
37 required to pay child support, upon request by the State agency and
38 pursuant to procedures and in a form prescribed by the director;
- 39 i. The furnishing by the director to the Board of Public
40 Utilities any information contained in tax information statements,
41 reports or returns or any audit thereof or a report of any
42 investigation made with respect thereto, as may be necessary for the
43 administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and
44 P.L.1997, c.162 (C.54:10A-5.25 et al.);
- 45 j. The furnishing by the director to the Director of the Division
46 of Alcoholic Beverage Control in the Department of Law and
47 Public Safety any information contained in tax information
48 statements, reports or returns or any audit thereof or a report of any
49 investigation made with respect thereto, as may be relevant, in the

- 1 discretion of the director, in any proceeding conducted for the
2 issuance, suspension or revocation of any license authorized
3 pursuant to Title 33 of the Revised Statutes;
- 4 k. The inspection by the Attorney General or other legal
5 representative of this State of the reports or files of any tobacco
6 product manufacturer, as defined in section 2 of P.L.1999, c.148
7 (C.52:4D-2), for any period in which that tobacco product
8 manufacturer was not or is not in compliance with subsection a. of
9 section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed
10 distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-
11 2), for the purpose of facilitating the administration of the
12 provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);
- 13 l. The furnishing, at the discretion of the director, of
14 information as to whether a contractor or subcontractor holds a
15 valid business registration as defined in section 1 of P.L.2001, c.134
16 (C.52:32-44);
- 17 m. The furnishing by the director to a State agency as defined in
18 section 1 of P.L.1995, c.158 (C.54:50-24) the names of licensees
19 subject to suspension for non-payment of State tax indebtedness
20 pursuant to P.L.2004, c.58 (C.54:50-26.1 et al.);
- 21 n. The release to the United States Department of the Treasury,
22 Bureau of Financial Management Service, or its successor of
23 relevant taxpayer information for purposes of implementing a
24 reciprocal collection and offset of indebtedness agreement entered
25 into between the State of New Jersey and the federal government
26 pursuant to section 1 of P.L.2006, c.32 (C.54:49-12.7);
- 27 o. The examination of said records and files by the
28 Commissioner of Health and Senior Services, the Commissioner of
29 Human Services, the Medicaid Inspector General, or their
30 respective duly authorized agents, pursuant to section 5 of
31 P.L.2007, c.217 (C.26:2H-18.60e), section 3 of P.L.1968, c.413
32 (C.30:4D-3), or section 5 of P.L.2005, c.156 (C.30:4J-12);
- 33 p. The furnishing at the discretion of the director of employer
34 provided wage and tax withholding information contained in tax
35 reports or returns filed pursuant to N.J.S.54A:7-2, 54A:7-4 and
36 54A:7-7, to the designated municipal officer of a municipality
37 authorized to impose an employer payroll tax pursuant to the
38 provisions of Article 5 (Employer Payroll Tax) of the "Local Tax
39 Authorization Act," P.L.1970, c.326 (C.40:48C-14 et seq.), for the
40 limited purpose of verifying the payroll information reported by
41 employers subject to the employer payroll tax;
- 42 q. The furnishing by the director to the Commissioner of Labor
43 and Workforce Development of any information, including, but not
44 limited to, tax information statements, reports, audit files, returns,
45 or reports of any investigation for the purpose of labor market
46 research or assisting in investigations pursuant to any State wage,
47 benefit or tax law as enumerated in section 1 of P.L.2009, c.194
48 (C.34:1A-1.11); or pursuant to P.L.1940, c.153 (C.34:2-21.1 et
49 seq.).

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

10 s. The furnishing by the director to the Commissioner of
11 Banking and Insurance of any information, including, but not
12 limited to, tax information statements, reports, audit files, returns,
13 or reports of any investigation for the purpose of assisting in
14 investigations pursuant to any insurance fraud investigation as
15 enumerated in P.L.1983, c.320 (C.17:33A-1 et seq.).

16 (cf: P.L.2020, c.156, s.126)

17

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

20

21

22

STATEMENT

23

24 This bill streamlines the identification of employee
25 misclassification. Specifically, the bill makes misclassifying
26 employees for the purpose of evading payment of insurance
27 premiums a violation of the New Jersey Insurance Fraud Prevention
28 Act. Additionally, the bill specifies penalties for fraud when a
29 misclassification occurs. The bill provides additional resources to
30 DOBI to investigate misclassification as a violation of the New
31 Jersey Insurance Fraud Prevention Act, including consultation by
32 the Bureau of Fraud Deterrence with the Department of Labor and
33 Workforce Development and the authorization of the release of tax
34 information to the Commissioner of Banking and Insurance for the
35 purpose of insurance fraud investigations.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 3922

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Senate Labor Committee reports favorably Senate Bill No. 3922.

This bill streamlines the identification of employee misclassification. Specifically, the bill makes misclassifying employees for the purpose of evading payment of insurance premiums a violation of the New Jersey Insurance Fraud Prevention Act. Additionally, the bill specifies penalties for fraud when a misclassification occurs. The bill provides additional resources to the Department of Banking and Insurance to investigate misclassification as a violation of the New Jersey Insurance Fraud Prevention Act, including consultation by the Bureau of Fraud Deterrence with the Department of Labor and Workforce Development and the authorization of the release of tax information to the Commissioner of Banking and Insurance for the purpose of insurance fraud investigations.

Governor Murphy Signs Legislation to Protect New Jersey Workers, Employers From Unlawful Misclassification

07/8/2021

TRENTON – Building on his commitment to making sure that workers and employers in New Jersey are treated fairly, Governor Phil Murphy today signed a four-bill legislative package furthering state efforts to stop employee misclassification.

Misclassification is the practice of illegally and improperly classifying employees as independent contractors. This practice deprives workers of the right to earn minimum wage and overtime, workers' compensation, unemployment, earned sick leave, job-protected family leave, temporary disability, and equal pay, and leaves them unprotected against discrimination. It also hurts the vast majority of employers who play by the rules, by putting them at a competitive disadvantage against those who flout the law.

Through today's action, a new Office of Strategic Enforcement and Compliance within the Department of Labor (DOL) will be created and DOL will create a database to track payroll projects, critical steps to tracking and eliminating misclassification. The others bills in the package will simplify the process for identifying misclassified workers and implement stop-work orders at worksites where misclassification is identified.

Tackling worker misclassification has been a priority of the Murphy Administration since day one, and these efforts build on the significant progress that already has been made. In 2018, a Department of Labor audit found more than 12,300 cases of workers being misclassified, resulting in more than \$460 million in underreported gross wages and \$14 million in lost state unemployment and temporary disability contributions. The audit covered just 1 percent of businesses, suggesting that the real cost of misclassification is much, much higher.

During his first year in office, Governor Murphy signed an executive order creating a Misclassification Task Force to determine the scope of the problem and propose measures to alleviate it. The Task Force was the result of a partnership between the Administration, the Legislature, and key labor and workforce stakeholders, that subsequently led to laws stiffening penalties and providing new enforcement tools to tackle misclassification. Today's bill signings continue this progress.

"Workers who are misclassified as independent contractors miss out on fair wages and benefits," **said Governor Phil Murphy**. "These business practices are unfair, abusive, and illegal and they cannot be tolerated. Today's action will give the state more tools to root-out and prevent misclassification. I am honored to sign these bills today on behalf of New Jersey's workers."

"We should all be proud that New Jersey is the best state in which to be a worker in the entire country. Because of the wages, rights and benefits New Jersey guarantees, we're also the state whose workforce delivers the biggest value to employers," **said Labor Commissioner Robert Asaro-Angelo**. "The action taken by the Governor here today will only bolster New Jersey's workforce -- the employees who deserve the protections put in place for them -- and the employers who play by the rules and properly classify their workers."

"Employee misclassification has been a growing issue in New Jersey and I'm pleased to see further legislation signed into law that combats this abhorrent practice," **said Senator Fred Madden**, chair of the

Senator Labor Committee and sponsor of A-5891. "It may sound like a simple bureaucratic problem, but it is far more onerous: misclassification results in hard-working New Jerseyans being denied basic benefits such as overtime, medical leave, unemployment insurance, and safe workplaces, and their unscrupulous employers benefit. I'm confident this package of bills will go far in eradicating this practice and ensuring that our workers are treated fairly."

"For too long, some contractors working for the state have been less than forthcoming about how they're paying their employees," **said Senator Troy Singleton**, sponsor of A-1171. "The creation of a centrally located, publicly available, database of payroll certifications will go far to ensuring that workers are being paid proper wages when working on public contracts. That is good for the workers and taxpayers alike, and I'm pleased to see the measure now signed into law."

"It is necessary to increase the Department of Labor's enforcement powers. We have seen far too many violations of State wage, benefit and tax laws," **said Assemblyman Anthony Verrelli**, sponsor of A-5890. "This law will further the department's responsibility to mitigate bad actors from misclassifying employees and lessen violations against laws previously enacted."

"Creating a centralized office for the coordination of workforce and labor-related efforts will help ensure greater enforcement and compliance with New Jersey wage, benefit and tax laws," **Assembly sponsors of A-5891 Joseph Egan and Robert Karabinchak said in a joint statement**. "This office will oversee the preliminary review of any business seeking State assistance to make sure they are complying with necessary regulations regarding employee compensation and contributions to unemployment and disability benefits funds. Ultimately, the coordination of these efforts will prove beneficial to our state, to employees, and to law-abiding businesses that deserve our assistance."

"Misclassifying workers as independent contractors just to get out of paying insurance premiums harms hard-working people who deserve the same benefits and protections as other company employees," **said Assemblywoman Shavonda Sumter**, sponsor of A-5892. "Not only will misclassification for the purpose of evading insurance premiums be a violation of our state's Insurance Fraud Prevention Act, but this law will also provide additional resources to help streamline the identification of employee misclassification."

Today, Governor Murphy took action on the following legislation:

A-5890/S-3920 (Verrelli/Madden, Greenstein) - Concerns enforcement of employee misclassification and stop-work order laws.

A-5891/S-3921 (Egan, Karabinchak, Space/Madden, Oroho) - Creates "Office of Strategic Enforcement and Compliance" in DOLWD; appropriates \$1 million from General Fund.

A-5892/S-3922 (Sumter/Madden, Lagana) - Streamlines identification of employee misclassification.

A-1171/S-1260 (Freiman, Karabinchak, Verrelli/Singleton, Oroho)- Requires Commissioner of Labor and Workforce Development to create Statewide database of certified payroll information for public works projects.

This Week in NJ: July 9th, 2021

07/9/2021



Governor Murphy Signs Bills to Advance New Jersey's Clean Energy Future

Governor Phil Murphy signed a package of bills aimed at advancing New Jersey's transition to a clean energy future to further the Administration's goal of reaching 100 percent clean energy by 2050. The legislation will increase solar development and facilitate installation of electric vehicle charging infrastructure throughout the state.

"Three and a half years ago we put forth one of the most aggressive plans in the nation to move New Jersey away from fossil fuels and towards a future based on clean and renewable energy technologies," **said Governor Murphy**. "From wind-turbine component manufacturing, to solar energy installation, to electric vehicles, the modernization of our energy sector will not only aid us in addressing climate change, but also drive significant economic growth and create good-paying, union jobs across the state. By signing these bills today, we are marking another milestone on our path to 100 percent clean energy by 2050 and fueling our clean innovation economy."

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“Workers who are misclassified as independent contractors miss out on fair wages and benefits,” **said Governor Murphy.** “These business practices are unfair, abusive, and illegal and they cannot be tolerated. Today’s action will give the state more tools to root-out and prevent misclassification. I am honored to sign these bills today on behalf of New Jersey’s workers.”

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NJBPU Launches Year 2 of Popular Charge Up New Jersey Electric Vehicle Rebate Program

The New Jersey Board of Public Utilities opened Year 2 of its Charge Up New Jersey electric vehicle (EV) incentive program taking one more step toward the Murphy Administration’s goal of getting 330,000 EVs on the road by 2025. Charge Up New Jersey provides a rebate of up to \$5,000 toward a new EV purchased or leased in New Jersey.

The incentive is available exclusively as a “point-of-sale” rebate applied during the purchase or leasing process at dealerships and requires a valid New Jersey driver’s license to get started. Only EVs registered and purchased in New Jersey are eligible.

“Transportation is responsible for over 40 percent of the state’s greenhouse gas emissions, as well as harmful air pollution, which often disproportionately impacts overburdened communities,” **said Joseph L. Fiordaliso, NJBPU President.** “Electrifying the transportation sector is a core strategy of Governor Murphy’s Energy Master Plan because it will help tackle climate change while improving public health and air quality. Making EVs more affordable will encourage EV adoption and get us closer to 100 percent clean energy by 2050.”

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Murphy Administration Enforces Strong Building Codes and Multi-Unit Housing Inspections Across the State

Governor Murphy and Lieutenant Governor Oliver reminded the public that the Division of Codes and Standards in the New Jersey Department of Community Affairs (DCA) is at the forefront of enforcing building codes, in partnership with municipalities in the state, to protect the health and safety of people who live, work, and visit New Jersey.



“The Florida condominium collapse is a sobering reminder that inspections and enforcement of building codes are critical tools that keep people safe,” **said Governor Murphy.** “New Jersey’s building codes are among the strongest in the nation, and our residents can rest assured that the Department of Community Affairs goes above and beyond the nationwide standard. Through continued vigilance, we can prevent tragedies and save lives.”

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