

STATE OF NEW YORK

6680

2021-2022 Regular Sessions

IN ASSEMBLY

March 25, 2021

Introduced by M. of A. BURGOS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to penalties for wilful false statements for unemployment purposes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 594 of the labor law, as amended by section 16 of
2 part 0 of chapter 57 of the laws of 2013, subdivision 6 as added by
3 chapter 97 of the laws of 2020, is amended to read as follows:

4 § 594. [~~Reduction and recovery~~] Recovery of benefits and penalties for
5 wilful false statement. (1) A claimant or employer who has wilfully made
6 a false statement or representation to obtain or avoid any benefit under
7 the provisions of this article shall [~~forfeit benefits for at least the~~
8 ~~first four but not more than the first eighty effective days following~~
9 ~~discovery of such offense for which he or she otherwise would have been~~
10 ~~entitled to receive benefits. Such penalty shall apply only once with~~
11 ~~respect to each such offense.~~

12 ~~(2) For the purpose of subdivision four of section five hundred ninety~~
13 ~~of this article, the claimant shall be deemed to have received benefits~~
14 ~~for such forfeited effective days.~~

15 ~~(3) The penalty provided in this section shall not be confined to a~~
16 ~~single benefit year but shall no longer apply in whole or in part after~~
17 ~~the expiration of two years from the date of the final determination.~~
18 ~~Such two year period shall be tolled during the time period a claimant~~
19 ~~has an appeal pending.~~

20 ~~(4)~~ be subject to the penalties set forth in this section.

21 (2) A claimant shall refund all moneys received because of such false
22 statement or representation and pay a civil penalty in an amount equal
23 to the greater of one hundred dollars or fifteen percent of the total
24 overpaid benefits determined pursuant to this section. An employer who
25 wilfully made a false statement or representation to avoid payment of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 any benefit under the provisions of this article shall pay a civil
2 penalty in an amount equal to the greater of one hundred dollars or
3 fifteen percent of the total benefit determined pursuant to this
4 section. The penalties collected hereunder shall be deposited in the
5 fund. The penalties assessed under this subdivision shall apply and be
6 assessed for any benefits paid under federal unemployment and extended
7 unemployment programs administered by the department in the same manner
8 as provided in this article. The penalties in this section shall be in
9 addition to any penalties imposed under this chapter or any state or
10 federal criminal statute. No penalties or interest assessed pursuant to
11 this section may be deducted or withheld from benefits.

12 ~~[(5)]~~ (3) (a) Upon a determination based upon a willful false state-
13 ment or representation becoming final through exhaustion of appeal
14 rights or failure to exhaust hearing rights, the commissioner may
15 recover the amount found to be due by commencing a civil action, or by
16 filing with the county clerk of the county where the claimant resides
17 the final determination of the commissioner or the final decision by an
18 administrative law judge, the appeal board, or a court containing the
19 amount found to be due including interest and civil penalty. The commis-
20 sioner may only make such a filing with the county clerk when:

21 (i) The claimant has responded to requests for information prior to a
22 determination and such requests for information notified the claimant of
23 his or her rights to a fair hearing as well as the potential conse-
24 quences of an investigation and final determination under this section
25 including the notice required by subparagraph (iii) of paragraph (b) of
26 this subdivision. Additionally if the claimant requested a fair hearing
27 or appeal subsequent to a determination, that the claimant was present
28 either in person or through electronic means at such hearing, or subse-
29 quent appeal from which a final determination was rendered;

30 (ii) The commissioner has made efforts to collect on such final deter-
31 mination; and

32 (iii) The commissioner has sent a notice, in accordance with paragraph
33 (b) of this subdivision, of intent to docket such final determination by
34 first class or certified mail, return receipt requested, ten days prior
35 to the docketing of such determination.

36 (b) The notice required in subparagraph (iii) of paragraph (a) of this
37 subdivision shall include the following:

38 (i) That the commissioner intends to docket a final determination
39 against such claimant as a judgment;

40 (ii) The total amount to be docketed; and

41 (iii) Conspicuous language that reads as follows: "Once entered, a
42 judgment is good and can be used against you for twenty years, and your
43 money, including a portion of your paycheck and/or bank account, may be
44 taken. Also, a judgment will hurt your credit score and can affect your
45 ability to rent a home, find a job, or take out a loan."

46 ~~[(6)]~~ (4) Notwithstanding the provisions of this section, throughout
47 the duration of the state disaster emergency declared by executive order
48 number two hundred two and any further amendments or modifications ther-
49 eto, the penalties and requirements of ~~[subdivisions]~~ subdivision one~~[,~~
50 ~~two, and three]~~ of this section shall not be applicable to claimants
51 otherwise entitled to receive benefits under this article.

52 § 2. Section one of this act shall apply to all false statements and
53 representations determined on or after the effective date of this act
54 and all forfeited effective days determined prior to such effective date
55 shall remain in full force and effect for two years from the expiration
56 of the initial determination. For purposes of applying such forfeited

1 benefits, each effective day shall be considered twenty-five percent of
2 a claimant's weekly benefit rate.

3 § 3. This act shall take effect on the sixtieth day after it shall
4 have become a law; provided, however, that the amendments to subdivision
5 (6) of section 594 of the labor law made by section one of this act
6 shall not affect the repeal of such subdivision and shall be deemed
7 repealed therewith.