STATE OF NEW YORK

2136

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

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

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

(2) A claimant shall refund all moneys received because of such false statement or representation and pay a civil penalty in an amount equal to the greater of one hundred dollars or fifteen percent of the total overpaid benefits determined pursuant to this section. **An employer who 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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any benefit under the provisions of this article shall pay a civil penalty in an amount equal to the greater of one hundred dollars or fifteen percent of the total benefit determined pursuant to this section. The penalties collected hereunder shall be deposited in the fund. The penalties assessed under this subdivision shall apply and be assessed for any benefits paid under federal unemployment and extended unemployment programs administered by the department in the same manner as provided in this article. The penalties in this section shall be in addition to any penalties imposed under this chapter or any state or federal criminal statute. No penalties or interest assessed pursuant to this section may be deducted or withheld from benefits.

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

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

(ii) The commissioner has made efforts to collect on such final determination; and

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

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

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

(ii) The total amount to be docketed; and

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

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

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

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

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