



House of Representatives

File No. 891

General Assembly

January Session, 2015

(Reprint of File No. 367)

Substitute House Bill No. 6793
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 26, 2015

***AN ACT CONCERNING INTENTIONAL MISREPRESENTATIONS,
NONDISCLOSURES, NONDECLARATIONS AND VIOLATIONS AS
THEY RELATE TO UNEMPLOYMENT COMPENSATION BENEFITS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-273 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2016*):

3 (a) (1) Any person who, through error, has received any sum as
4 benefits under this chapter while any condition for the receipt of
5 benefits imposed by this chapter was not fulfilled in his case, or has
6 received a greater amount of benefits than was due him under this
7 chapter, shall be charged with an overpayment of a sum equal to the
8 amount so overpaid to him, provided such error has been discovered
9 and brought to his attention within one year of the date of receipt of
10 such benefits. A person whose receipt of such a sum was not due to
11 fraud, [wilful] intentional misrepresentation or [wilful] intentional
12 nondisclosure by himself or another shall be entitled to a hearing
13 before an examiner designated by the administrator. Such examiner
14 shall determine whether: (A) Such person shall repay such sum to the

15 administrator for the Unemployment Compensation Fund, (B) such
16 sum shall be recouped by offset from such person's unemployment
17 benefits, or (C) repayment or recoupment of such sum would defeat
18 the purpose of the benefits or be against equity and good conscience
19 and should be waived. In any case where the examiner determines that
20 such sum shall be recouped by offset from a person's unemployment
21 benefits, the deduction from benefits shall not exceed fifty per cent of
22 the person's weekly benefit amount. Where such offset is insufficient to
23 recoup the full amount of the overpayment, the claimant shall repay
24 the remaining amount in accordance with a repayment schedule as
25 determined by the examiner. If the claimant fails to repay according to
26 the schedule, the administrator may recover such overpayment
27 through a wage execution against the claimant's earnings upon his
28 return to work in accordance with the provisions of section 52-361a,
29 and the administrator may request the Commissioner of
30 Administrative Services to seek reimbursement for such amount
31 pursuant to section 12-742. Any person with respect to whom a
32 determination of overpayment has been made, according to the
33 provisions of this subsection, shall be given notice of such
34 determination and the provisions for repayment or recoupment of the
35 amount overpaid. No repayment shall be required and no deduction
36 from benefits shall be made until the determination of overpayment
37 has become final.

38 (2) The determination of overpayment shall be final unless the
39 claimant, within twenty-one days after notice of such determination
40 was mailed to him at his last-known address, files an appeal from such
41 determination to a referee, except that any such appeal that is filed
42 after such twenty-one-day period may be considered to be timely filed
43 if the filing party shows good cause, as defined in regulations adopted
44 pursuant to section 31-249h, for the late filing. If the last day for filing
45 an appeal falls on any day when the offices of the Employment
46 Security Division are not open for business, such last day shall be
47 extended to the next business day. If any such appeal is filed by mail,
48 the appeal shall be considered timely filed if the appeal was received

49 within such twenty-one-day period or bears a legible United States
50 postal service postmark that indicates that within such twenty-one-day
51 period the appeal was placed in the possession of postal authorities for
52 delivery to the appropriate office. Posting dates attributable to private
53 postage meters shall not be considered in determining the timeliness of
54 appeals filed by mail.

55 (3) The appeal shall be heard in the same manner provided in
56 section 31-242 for an appeal from the decision of an examiner on a
57 claim for benefits. Any party aggrieved by the decision of the referee,
58 including the administrator, may appeal to the Employment Security
59 Board of Review in the manner provided in section 31-249. Decisions
60 of the board may be appealed to the Superior Court in the manner
61 provided in section 31-249b. The administrator is authorized, eight
62 years after the payment of any benefits described in this subsection, to
63 cancel any claim for such repayment or recoupment which in his
64 opinion is uncollectible. Effective January 1, 1996, and annually
65 thereafter, the administrator shall report to the joint standing
66 committee of the General Assembly having cognizance of matters
67 relating to finance, revenue and bonding and the joint standing
68 committee of the General Assembly having cognizance of matters
69 relating to labor and public employees, the aggregate number and
70 value of all such claims deemed uncollectible and therefore cancelled
71 during the previous calendar year. Any determination of overpayment
72 made under this section which becomes final may be enforced by a
73 wage execution in the same manner as a judgment of the Superior
74 Court when the claimant fails to pay according to his repayment
75 schedule. The court may issue a wage execution upon any final
76 determination of overpayment in the same manner as in cases of
77 judgments rendered in the Superior Court, and upon the filing of an
78 application to the court for an execution, the administrator shall send
79 to the clerk of the court a certified copy of such determination.

80 (b) (1) Any person who, by reason of fraud, [wilful] intentional
81 misrepresentation or [wilful] intentional nondisclosure by such person
82 or by another of a material fact, has received any sum as benefits under

83 this chapter while any condition for the receipt of benefits imposed by
84 this chapter was not fulfilled in such person's case, or has received a
85 greater amount of benefits than was due such person under this
86 chapter, shall be charged with an overpayment and shall be liable to
87 repay to the administrator for the Unemployment Compensation Fund
88 a sum equal to the amount so overpaid to such person. If such person
89 does not make repayment in full of the sum overpaid, the
90 administrator shall recoup such sum by offset from such person's
91 unemployment benefits. The deduction from benefits shall be one
92 hundred per cent of the person's weekly benefit entitlement until the
93 full amount of the overpayment has been recouped. Where such offset
94 is insufficient to recoup the full amount of the overpayment, the
95 claimant shall repay the remaining amount plus, for any determination
96 of an overpayment made on or after July 1, 2005, interest at the rate of
97 one per cent of the amount so overpaid per month, in accordance with
98 a repayment schedule as determined by the examiner. If the claimant
99 fails to repay according to the schedule, the administrator may recover
100 such overpayment plus interest through a wage execution against the
101 claimant's earnings upon the claimant's return to work in accordance
102 with the provisions of section 52-361a. In addition, the administrator
103 may request the Commissioner of Administrative Services to seek
104 reimbursement for such amount pursuant to section 12-742. If the
105 administrator's actions are insufficient to recover such overpayment,
106 the administrator may submit the outstanding balance to the Internal
107 Revenue Service for the purpose of offsetting the claimant's federal tax
108 refund pursuant to 26 USC 6402(d), 31 USC 3720A or other applicable
109 federal laws. The administrator is authorized, eight years after the
110 payment of any benefits described in this subsection, to cancel any
111 claim for such repayment or recoupment which in the administrator's
112 opinion is uncollectible. Effective January 1, 1996, and annually
113 thereafter, the administrator shall report to the joint standing
114 committee of the General Assembly having cognizance of matters
115 relating to finance, revenue and bonding and the joint standing
116 committee of the General Assembly having cognizance of matters
117 relating to labor and public employees, the aggregate number and

118 value of all such claims deemed uncollectible and therefore cancelled
119 during the previous calendar year.

120 (2) (A) For any determination of an overpayment made prior to
121 October 1, 2013, any person who has made a claim for benefits under
122 this chapter and has knowingly made a false statement or
123 representation or has knowingly failed to disclose a material fact in
124 order to obtain benefits or to increase the amount of benefits to which
125 such person may be entitled under this chapter shall forfeit benefits for
126 not less than one or more than thirty-nine compensable weeks
127 following determination of such offense or offenses, during which
128 weeks such person would otherwise have been eligible to receive
129 benefits. For the purposes of section 31-231b, such person shall be
130 deemed to have received benefits for such forfeited weeks. This
131 penalty shall be in addition to any other applicable penalty under this
132 section and in addition to the liability to repay any moneys so received
133 by such person and shall not be confined to a single benefit year. (B)
134 For any determination of an overpayment made on or after October 1,
135 2013, any person who has made a claim for benefits under this chapter
136 and has knowingly made a false statement or representation or has
137 knowingly failed to disclose a material fact in order to obtain benefits
138 or to increase the amount of benefits to which such person may be
139 entitled under this chapter shall be subject to a penalty of fifty per cent
140 of the amount of overpayment for the first offense and a penalty of one
141 hundred per cent of the amount of overpayment for any subsequent
142 offense. This penalty shall be in addition to the liability to repay the
143 full amount of overpayment and shall not be confined to a single
144 benefit year. Thirty-five per cent of any such penalty shall be paid into
145 the Unemployment Compensation Trust Fund and sixty-five per cent
146 of such penalty shall be paid into the Employment Security
147 Administration Fund. The penalty amounts computed in this
148 subparagraph shall be rounded to the nearest dollar with fractions of a
149 dollar of exactly fifty cents rounded upward.

150 (3) Any person charged with the fraudulent receipt of benefits or the
151 making of a fraudulent claim, as provided in this subsection, shall be

152 entitled to a hearing before the administrator, or a deputy or
153 representative designated by the administrator. Notice of the time and
154 place of such hearing, and the reasons for such hearing, shall be given
155 to the person not less than five days prior to the date appointed for
156 such hearing. The administrator shall determine, on the basis of facts
157 found by the administrator, whether or not a fraudulent act subject to
158 the penalties of this subsection has been committed and, upon such
159 finding, shall fix the penalty for any such offense according to the
160 provisions of this subsection. Any person determined by the
161 administrator to have committed fraud under the provisions of this
162 section shall be liable for repayment to the administrator of the
163 Unemployment Compensation Fund for any benefits determined by
164 the administrator to have been collected fraudulently, as well as any
165 other penalties assessed by the administrator in accordance with the
166 provisions of this subsection. Until such liabilities have been met to the
167 satisfaction of the administrator, such person shall forfeit any right to
168 receive benefits under the provisions of this chapter. Notification of
169 such decision and penalty shall be mailed to such person's last known
170 address and shall be final unless such person files an appeal not later
171 than twenty-one days after the mailing date of such notification, except
172 that (A) any such appeal that is filed after such twenty-one-day period
173 may be considered to be timely filed if the filing party shows good
174 cause, as defined in regulations adopted pursuant to section 31-249h,
175 for the late filing, (B) if the last day for filing an appeal falls on any day
176 when the offices of the Employment Security Division are not open for
177 business, such last day shall be extended to the next business day, and
178 (C) if any such appeal is filed by mail, the appeal shall be considered
179 timely filed if the appeal was received within such twenty-one-day
180 period or bears a legible United States postal service postmark that
181 indicates that within such twenty-one-day period the appeal was
182 placed in the possession of postal authorities for delivery to the
183 appropriate office. Posting dates attributable to private postage meters
184 shall not be considered in determining the timeliness of appeals filed
185 by mail. Such appeal shall be heard by a referee in the same manner
186 provided in section 31-242 for an appeal from the decision of an

187 examiner on a claim for benefits. The manner in which such appeals
188 shall be heard and appeals taken therefrom to the board of review and
189 then to the Superior Court, either by the administrator or the claimant,
190 shall be in accordance with the provisions set forth in section 31-249 or
191 31-249b, as the case may be. Any determination of overpayment made
192 under this subsection which becomes final on or after October 1, 1995,
193 may be enforced in the same manner as a judgment of the Superior
194 Court when the claimant fails to pay according to the claimant's
195 repayment schedule. The court may issue execution upon any final
196 determination of overpayment in the same manner as in cases of
197 judgments rendered in the Superior Court; and upon the filing of an
198 application to the court for an execution, the administrator shall send
199 to the clerk of the court a certified copy of such determination.

200 (c) Any person, firm or corporation who knowingly employs a
201 person and pays such employee without declaring such payment in
202 the payroll records shall be guilty of a class A misdemeanor.

203 (d) If, after investigation, the administrator determines that there is
204 probable cause to believe that the person, firm or corporation has
205 [wilfully] intentionally failed to declare payment of wages in the
206 payroll record, the administrator shall provide an opportunity for a
207 hearing on the matter. If a hearing is requested, it shall be conducted
208 by the administrator, or a deputy or representative designated by him.
209 Notice of the time and place of such hearing, and the reasons therefor,
210 shall be given to the person, firm, or corporation not less than five days
211 prior to the date appointed for such hearing. If the administrator
212 determines, on the basis of the facts found by him, that such
213 nondeclaration occurred and was [wilful] intentional, the
214 administrator shall fix the payments and penalties in accordance with
215 the provisions of subsection (e) of this section. Such person, firm or
216 corporation may appeal to the superior court for the judicial district of
217 Hartford or for the judicial district in which the employer's principal
218 place of business is located. Such court shall give notice of a time and
219 place of hearing to the administrator. At such hearing the court may
220 confirm or correct the administrator's determination. If the

221 administrator's determination is confirmed, the cost of such
222 proceedings, as in civil actions, shall be assessed against such person,
223 firm or corporation. No costs shall be assessed against the state on such
224 appeal.

225 (e) If the administrator determines that any person, firm or
226 corporation has [wilfully] intentionally failed to declare the payment of
227 wages on payroll records, the administrator may impose a penalty of
228 [ten] fifteen per cent of the total contributions [past] due to the
229 administrator [, as determined pursuant to section 31-270] during the
230 entire period the person, firm or corporation intentionally failed to
231 declare the payment of wages on payroll records. Such determination
232 shall be made not later than three years subsequent to the date such
233 contributions became payable. Such penalty shall be in addition to any
234 other applicable penalty and interest under section 31-266. In addition,
235 the administrator may require the person, firm or corporation to make
236 contributions at the maximum rate provided in section 31-225a for a
237 period of one year following the determination by the administrator
238 concerning the [wilful] intentional nondeclaration. If the person, firm
239 or corporation is paying or should have been paying, the maximum
240 rate at the time of the determination, the administrator may require
241 that such maximum rate continue for a period of three years following
242 the determination. The provisions of this subsection shall not apply to
243 any person, firm or corporation that enters into an agreement with a
244 licensed contractor to perform services for such person, firm or
245 corporation pursuant to such agreement, provided such licensed
246 contractor is not an employee of such person, firm or corporation in
247 connection with the services such contractor provides and whose
248 compensation is reported or required to be reported on an Internal
249 Revenue Service Form 1099 issued by the retaining person, firm or
250 corporation.

251 (f) Any person who knowingly makes a false statement or
252 representation or fails to disclose a material fact in order to obtain,
253 increase, prevent or decrease any benefit, contribution or other
254 payment under this chapter, or under any similar law of another state

255 or of the United States in regard to which this state acted as agent
256 pursuant to an agreement authorized by section 31-225, whether to be
257 made to or by himself or any other person, and who receives any such
258 benefit, pays any such contribution or alters any such payment to his
259 advantage by such fraudulent means (1) shall be guilty of a class A
260 misdemeanor if such benefit, contribution or payment amounts to five
261 hundred dollars or less or (2) shall be guilty of a class D felony if such
262 benefit, contribution or payment amounts to more than five hundred
263 dollars. Notwithstanding the provisions of section 54-193, no person
264 shall be prosecuted for a violation of the provisions of this subsection
265 committed on or after October 1, 1977, except within five years next
266 after such violation has been committed.

267 (g) Any person, firm or corporation who knowingly fails to pay
268 contributions or other payments due under this chapter shall be guilty
269 of a class A misdemeanor. Notwithstanding the provisions of section
270 54-193, no person shall be prosecuted for a violation of the provisions
271 of this subsection committed on or after October 1, 1987, except within
272 five years after such violation has been committed.

273 (h) Any person who knowingly violates any provision of this
274 chapter for which no other penalty is provided by law shall be fined
275 not more than two hundred dollars or imprisoned not more than six
276 months or both.

277 (i) Any person who [wilfully] intentionally violates any regulation
278 made by the administrator or the board under the authority of this
279 chapter, for which no penalty is specifically provided, shall be fined
280 not more than two hundred dollars.

281 (j) All interest payments collected by the administrator under
282 subsection (b) of this section shall be deposited in the Employment
283 Security Administration Fund.

284 (k) For any determination of an overpayment made on or after
285 October 1, 2013, if the administrator determines that an overpayment
286 was caused by an employer's failure to timely or adequately respond

287 to the administrator's request for information relating to a claim in a
288 manner prescribed by the administrator, such employer shall not be
289 relieved of its proportionate share of charges for each week
290 determined to be overpaid.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2016</i>	31-273

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Labor Dept.	UCF - Revenue Gain	Potential	Potential

Note: UCF=Unemployment Compensation Fund

Municipal Impact: None

Explanation

The bill increases the penalty, from 10% of unpaid unemployment taxes to 15% of all unemployment taxes, for an employer's intentional failure to declare wage payments used to determine unemployment taxes. This results in a potential revenue gain to the Unemployment Compensation Trust Fund beginning in FY 16.

House "A" establishes a three-year maximum period in which the Labor Commissioner may determine a violation under the bill's provisions and limits the circumstances to which the increased penalty provisions of the bill apply.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6793 (as amended by House "A")******AN ACT CONCERNING INTENTIONAL MISREPRESENTATIONS, NONDISCLOSURES, NONDECLARATIONS AND VIOLATIONS AS THEY RELATE TO UNEMPLOYMENT COMPENSATION BENEFITS.*****SUMMARY:**

This bill increases the penalty the labor commissioner may impose on an employer who intentionally fails to declare wage payments on the payroll records used to determine the employer's unemployment tax. Current law allows the commissioner to impose a penalty equal to 10% of the employer's unpaid tax. The bill instead allows her to impose a penalty equal to 15% of the employer's total unemployment taxes, paid and unpaid, during the period the employer intentionally failed to declare the wages. The commissioner must determine whether the employer intentionally failed to declare wages within three years after the taxes on the undeclared wages became payable.

In addition to paying a penalty, the law requires employers who fail to declare wage payments to also repay any unpaid unemployment taxes, plus interest. The bill specifies that these requirements do not apply to any person, firm, or corporation ("customer") that enters into an agreement with a licensed contractor to perform services for the customer if (1) the contractor is not performing the services as the customer's employee and (2) the customer reports, or is required to report, the contractor's compensation on IRS Form 1099. The law, however, does not require a customer to pay unemployment taxes on wages paid to a contractor who is not performing services as the customer's employee. Thus, it appears that this provision has no legal effect.

The bill also makes technical changes.

*House Amendment "A" adds the (1) three-year deadline for determining whether an employer failed to report wages and (2) provision that exempts customers who receive services from contractors from paying unpaid unemployment taxes and penalties for unreported wages paid to contractors.

EFFECTIVE DATE: January 1, 2016

BACKGROUND

"Employees" Under Unemployment Law

By law, a person performing service for another entity is considered the entity's employee unless (1) he or she has been and will be free from any control or direction related to performing the service, both under the contract of hire and in fact; (2) the service performed is outside the entity's usual course of business or outside the entity's places of business; and (3) he or she is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the service being performed (CGS § 31-222).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 1 (03/12/2015)