

§ 96-18. Penalties.

- (a) (1) It shall be unlawful for any person to make a false statement or representation knowing it to be false or to knowingly fail to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of such records.
- (2) A person who violates this subsection shall be found guilty of a Class 1 felony if the value of the benefit wrongfully obtained is more than four hundred dollars (\$400.00).
- (3) A person who violates this subsection shall be found guilty of a Class 1 misdemeanor if the value of the benefit wrongfully obtained is four hundred dollars (\$400.00) or less.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

- (1) Any employing units employing more than 10 employees.
- (2) A contribution of more than two thousand dollars (\$2,000) has not been paid.
- (3) An experience rating account balance is more than five thousand dollars (\$5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

(c) Any person who shall willfully violate any provisions of this Chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be guilty of a Class 1 misdemeanor, and each day such violation continues shall be deemed to be a separate offense.

(d) Repealed by Session Laws 1983, c. 625, s. 15.

(e) An individual shall not be entitled to receive benefits for a period of 52 weeks beginning with the first day of the week following the date that notice of determination or decision is mailed finding that he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation, or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this Chapter.

(f) Repealed by Session Laws 1983, c. 625, s. 15.

(g) (1) Repealed by Session Laws 2012-134, s. 4(b), effective October 1, 2012.

- (2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the Division) shall be liable to repay such sum to the Division as provided in subdivision (3) of this subsection.

- (3) The Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the Division may, except as provided herein, in its sole discretion choose:

- a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

- b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if

a hearing on the merits of the claim has not already been had) the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case, no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the Division, together with all monies collected thereunder, and when such order, execution or alias is referred to the agent of the Division for service, the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the overpayments and costs due by the

claimant. Additionally, the Division or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and (3).

- c. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to fraudulent nondisclosure or misrepresentation shall be liable to have the sums deducted from future benefits payable to the person under this Chapter. The amount deducted may be up to one hundred percent (100%) of that person's weekly benefit amount.
- d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above due to nonfraudulent reasons shall be liable to have the sums deducted from future benefits payable to the person under this Chapter but the amount deducted for any week shall be reduced by no more than fifty percent (50%) of that person's weekly benefit amount.
- e. To the extent permissible under the laws and Constitution of the United States, the Division is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.

- f. The Division may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the Division may remove the debt of the deceased claimant from its records.

(h) **Mandatory Federal Penalty.** – A person who has been held ineligible for benefits under subsection (e) of this section and who, because of those same acts or omissions, has received any sum as benefits under this Chapter to which the person is not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous payment. The penalty amount shall be payable to the Unemployment Insurance Fund. The penalty applies to an erroneous payment made under any State program providing for the payment of unemployment compensation as well as an erroneous payment made under any federal program providing for the payment of unemployment compensation. The notice of determination or decision advising the person that benefits have been denied or adjusted pursuant to subsection (e) of this section must include the reason for the finding of an erroneous payment, the penalty amount assessed under this subsection, and the reason the penalty has been applied.

The penalty amount may be collected in any manner allowed for the recovery of the erroneous payment, except that the penalty amount may not be recovered through offsets of future benefits. When a recovery with respect to an erroneous payment is made, any recovery applies first to the principal of the erroneous payment, then to the federally mandated penalty amount imposed under this subsection, and finally to any other amounts due. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20; 1965, c. 795, ss. 23, 24; 1971, c. 673, s. 31; 1977, c. 727, s. 55; 1979, c. 660, ss. 23-25; 1981, c. 160, s. 33; 1983, c. 625, s. 15; 1985, c. 552, s. 22; 1987, c. 103, s. 4; 1989, c. 583, ss. 13, 14; 1993, c. 343, s. 7; c. 539, ss. 674-676; 1994, Ex. Sess., c. 24, s. 14(c); 2003-67, s. 2; 2005-410, s. 6; 2011-401, s. 2.19; 2012-134, ss. 3(d), 4(a)-(c); 2013-2, s. 9(d); 2013-224, s. 19.)