

43:21-6.2 to 43:21-6.8

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2010 **CHAPTER:** 82

NJSA: 43:21-6.2 to 43:21-6.8 (Revises certain unemployment benefit claim procedures and requires registration of authorized agents of parties to the procedures)

BILL NO: S1968 (Substituted for A2864)

SPONSOR(S) Buono and others

DATE INTRODUCED: May 20, 2010

COMMITTEE: **ASSEMBLY:** Labor

SENATE: Labor

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** October 25, 2010

SENATE: October 18, 2010

DATE OF APPROVAL: October 27, 2010

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted)

S1968

SPONSOR'S STATEMENT: (Begins on page 16 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

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

A2864

SPONSOR'S STATEMENT: (Begins on page 16 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

[Third Reprint]

SENATE, No. 1968

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 20, 2010

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman WAYNE P. DEANGELO

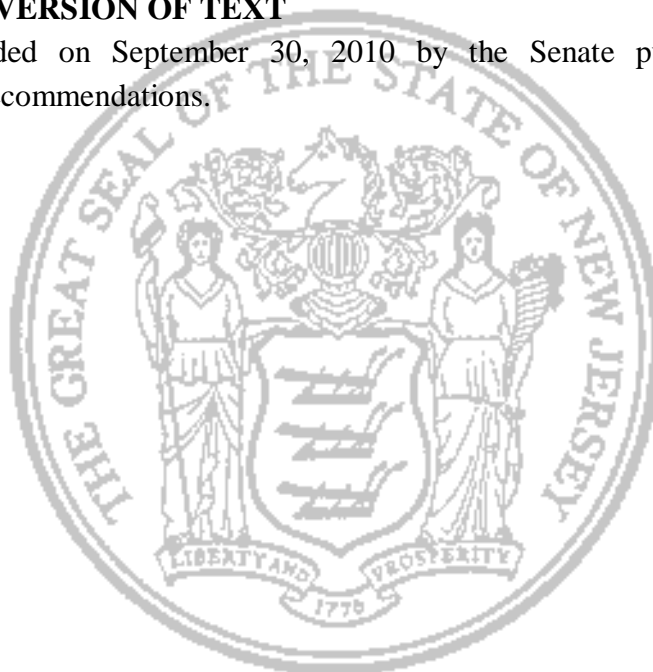
District 14 (Mercer and Middlesex)

SYNOPSIS

Revises certain unemployment benefit claim procedures and requires registration of authorized agents of parties to the procedures.

CURRENT VERSION OF TEXT

As amended on September 30, 2010 by the Senate pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 6/22/2010)

1 AN ACT concerning unemployment compensation and amending
2 and supplementing chapter 21 of Title 43 of the Revised Statutes.

3

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

6

7 1. R.S.43:21-6 is amended to read as follows:

8 43:21-6 (a) Filing. Claims for benefits shall be made in
9 accordance with such regulations as the Director of the Division of
10 Unemployment and Temporary Disability Insurance of the
11 Department of Labor and Workforce Development of the State of
12 New Jersey may approve. Each employer shall post and maintain
13 on his premises printed notices of his subject status, of such design,
14 in such numbers and at such places as the director of the division
15 may determine to be necessary to give notice thereof to persons in
16 the employer's service. Each employer shall give to each individual
17 at the time he becomes unemployed a printed copy of benefit
18 instructions. Both the aforesaid notices and instructions shall be
19 supplied by the division to employers without cost to them.

20 (b) (1) Procedure for making initial determinations with respect
21 to benefit years commencing on or after January 1, 1953.

22 A representative or representatives designated by the director of
23 the division and hereafter referred to as a "deputy" shall promptly
24 examine the claim, and shall notify the most recent employing unit
25 and, successively as necessary, each employer in inverse
26 chronological order during the base year. Such notification shall
27 require said employing unit and employer to furnish such
28 information to the deputy as may be necessary to determine the
29 claimant's eligibility and his benefit rights with respect to the
30 employer in question.

31 In his discretion, the director may appoint special deputies to
32 make initial or subsequent determinations under **[subsections 4(f)**
33 **and 5(d) of this chapter]** subsection (f) of R.S.43:21-4 and
34 subsection (d) of R.S.43-21-5.

35 If any employer or employing unit fails to respond to the request
36 for information within 10 days after the mailing, or communicating
37 by electronic means, of such request, the deputy shall rely entirely
38 on information from other sources, including an affidavit to the best
39 of the knowledge and belief of the claimant with respect to his
40 wages and time worked. Except in the event of fraud, if it is
41 determined that any information in such affidavit is erroneous, no
42 penalty ³[, or refund liability for resulting benefit overpayments

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted May 27, 2010.

²Assembly ALA committee amendments adopted June 14, 2010.

³Senate amendments adopted in accordance with Governor's recommendations September 30, 2010.

1 prior to the receipt of the employer's reply.】³ shall be imposed on
2 the claimant.

3 The deputy shall promptly make an initial determination based
4 upon the available information. The initial determination shall
5 show the weekly benefit amount payable, the maximum duration of
6 benefits with respect to the employer to whom the determination
7 relates, and the ratio of benefits chargeable to the employer's
8 account for benefit years commencing on or after July 1, 1986, and
9 also shall show whether the claimant is ineligible or disqualified for
10 benefits under the initial determination. The claimant and the
11 employer whose account may be charged for benefits payable
12 pursuant to said determination shall be promptly notified thereof.

13 Whenever an initial determination is based upon information
14 other than that supplied by an employer because such employer
15 failed to respond to the deputy's request for information, such initial
16 determination and any subsequent determination thereunder shall be
17 incontestable by the noncomplying employer, as to any charges to
18 his employer's account because of benefits paid prior to the close of
19 the calendar week following the receipt of his reply. Such initial
20 determination shall be altered if necessary upon receipt of
21 information from the employer, and any benefits paid or payable
22 with respect to weeks occurring subsequent to the close of the
23 calendar week following the receipt of the employer's reply shall be
24 paid in accordance with such altered initial determination.

25 The deputy shall issue a separate initial benefit determination
26 with respect to each of the claimant's base year employers, starting
27 with the most recent employer and continuing as necessary in the
28 inverse chronological order of the claimant's last date of
29 employment with each such employer. If an appeal is taken from
30 an initial determination, as hereinafter provided, by any employer
31 other than the first chargeable base year employer or for benefit
32 years commencing on or after July 1, 1986, that employer from
33 whom the individual was most recently separated, then such appeal
34 shall be limited in scope to include only one or more of the
35 following matters:

36 (A) The correctness of the benefit payments authorized to be
37 made under the determination;

38 (B) Fraud in connection with the claim pursuant to which the
39 initial determination is issued; or

40 (C) The refusal of suitable work offered by the chargeable
41 employer filing the appeal;

42 (D) Gross misconduct as provided in subsection (b) of
43 R.S.43:21-5.

44 The amount of benefits payable under an initial determination
45 may be reduced or canceled if necessary to avoid payment of
46 benefits for a number of weeks in excess of the maximum specified
47 in subsection (d) of **【section】 R.S.43:21-3 【of this Title】**.

1 Unless the claimant or any interested party, within [seven]
2 ²[20] seven² calendar days after delivery of notification of an
3 initial determination or [within 10 calendar days] ¹within ²[20]
4 10² calendar days¹ after such notification was mailed to his or their
5 last-known address and addresses, files an appeal from such
6 decision, such decision shall be final and benefits shall be paid or
7 denied in accordance therewith, except for such determinations as
8 may be altered in benefit amounts or duration as provided in this
9 paragraph. Benefits payable for periods pending an appeal and not
10 in dispute shall be paid as such benefits accrue; provided that
11 insofar as any such appeal is or may be an appeal from a
12 determination to the effect that the claimant is disqualified under
13 the provisions of R.S. 43:21-5 or any amendments thereof or
14 supplements thereto, benefits pending determination of the appeal
15 shall be withheld only for the period of disqualification as provided
16 for in said section, and notwithstanding such appeal, the benefits
17 otherwise provided by this act shall be paid for the period
18 subsequent to such period of disqualification; and provided, also,
19 that if there are two determinations of entitlement, benefits for the
20 period covered by such determinations shall be paid regardless of
21 any appeal which may thereafter be taken, but no employer's
22 account shall be charged with benefits so paid, if the decision is
23 finally reversed.

24 (2) Procedure for making initial determinations in certain cases
25 of concurrent employment, with respect to benefit years
26 commencing on or after January 1, 1953 and prior to benefit years
27 commencing on or after July 1, 1986.

28 Notwithstanding any other provisions of this Title, if an
29 individual shows to the satisfaction of the deputy that there were at
30 least 13 weeks in his base period in each of which he earned wages
31 from two or more employers totaling \$30.00 or more but in each of
32 which there was no single employer from whom he earned as much
33 as \$100.00, then such individual's claim shall be determined in
34 accordance with the special provisions of this paragraph. In such
35 case, the deputy shall determine the individual's eligibility for
36 benefits, his average weekly wage, weekly benefit rate and
37 maximum total benefits as if all his base year employers were a
38 single employer. Such determination shall apportion the liability
39 for benefit charges thereunder to the individual's several base year
40 employers so that each employer's maximum liability for charges
41 thereunder bears approximately the same relation to the maximum
42 total benefits allowed as the wages earned by the individual from
43 each employer during the base year bears to his total wages earned
44 from all employers during the base year. Such initial determination
45 shall also specify the individual's last date of employment within
46 the base year with respect to each base year employer, and such
47 employers shall be charged for benefits paid under said initial

1 determination in the inverse chronological order of such last date of
2 employment.

3 (3) Procedure for making subsequent determinations with
4 respect to benefit years commencing on or after January 1, 1953.
5 The deputy shall make determinations with respect to claims for
6 benefits thereafter in the course of the benefit year, in accordance
7 with any initial determination allowing benefits, and under which
8 benefits have not been exhausted, and each notification of a benefit
9 payment shall be a notification of an affirmative subsequent
10 determination. The allowance of benefits by the deputy on any such
11 determination, or the denial of benefits by the deputy on any such
12 determination, shall be appealable in the same manner and under
13 the same limitations as is provided in the case of initial
14 determinations.

15 (c) Appeals. Unless such appeal is withdrawn, an appeal
16 tribunal, after affording the parties reasonable opportunity for fair
17 hearing, shall affirm or modify the findings of fact and the
18 determination. The parties shall be duly notified of such tribunal's
19 decision, together with its reasons therefor, which shall be deemed
20 to be the final decision of the board of review, unless ²further
21 appeal is initiated pursuant to subsection (e) of this section within
22 10 days after the date of notification or mailing of the decision for
23 any decision made on or before December 1, 2010, or² within [10]
24 20 days after the date of notification or mailing of such decision ²[,
25 further appeal is initiated pursuant to subsection (e) of this section]
26 for any decision made after December 1, 2010².

27 (d) Appeal tribunals. To hear and decide disputed benefit
28 claims, including appeals from determinations with respect to
29 demands for refunds of benefits under [section 43:21-16(d) of this
30 chapter (R.S.43:21-1 et seq.)] subsection d. of R.S.43:21-16, the
31 director with the approval of the Commissioner of Labor ¹and
32 Workforce Development¹ shall establish impartial appeal tribunals
33 consisting of a salaried body of examiners under the supervision of
34 a Chief Appeals Examiner, all of whom shall be appointed pursuant
35 to the provisions of Title ¹[11] 11A¹ of the ¹[Revised] New
36 Jersey¹ Statutes, Civil Service and other applicable statutes.

37 (e) Board of review. The board of review may on its own
38 motion affirm, modify, or set aside any decision of an appeal
39 tribunal on the basis of the evidence previously submitted in such
40 case, or direct the taking of additional evidence, or may permit any
41 of the parties to such decision to initiate further appeals before it.
42 The board of review shall permit such further appeal by any of the
43 parties interested in a decision of an appeal tribunal which is not
44 unanimous and from any determination which has been overruled or
45 modified by any appeal tribunal. The board of review may remove
46 to itself or transfer to another appeal tribunal the proceedings on
47 any claim pending before an appeal tribunal. Any proceedings so

1 removed to the board of review shall be heard by a quorum thereof
2 in accordance with the requirements of subsection (c) of this
3 section. The board of review shall promptly notify the interested
4 parties of its findings and decision.

5 (f) Procedure. The manner in which disputed benefit claims,
6 and appeals from determinations with respect to (1) claims for
7 benefits and (2) demands for refunds of benefits under [section
8 43:21-16(d) of this chapter (R.S.43:21-1 et seq.)] subsection (d) of
9 R.S.43:21-16 shall be presented, the reports thereon required from
10 the claimant and from employers, and the conduct of hearings and
11 appeals shall be in accordance with rules prescribed by the board of
12 review for determining the rights of the parties, whether or not such
13 rules conform to common law or statutory rules of evidence and
14 other technical rules of procedure. A full and complete record shall
15 be kept of all proceedings in connection with a disputed claim. All
16 testimony at any hearing upon a disputed claim shall be recorded,
17 but need not be transcribed unless the disputed claim is further
18 appealed.

19 (g) Witness fees. Witnesses subpoenaed pursuant to this section
20 shall be allowed fees at a rate fixed by the director. Such fees and
21 all expenses of proceedings involving disputed claims shall be
22 deemed a part of the expense of administering this chapter (R.S.
23 43:21-1 et seq.).

24 (h) Court review. Any decision of the board of review shall
25 become final as to any party upon the mailing of a copy thereof to
26 such party or to his attorney, or upon the mailing of a copy thereof
27 to such party at his last-known address. The Division of
28 Unemployment and Temporary Disability Insurance and any party
29 to a proceeding before the board of review may secure judicial
30 review of the final decision of the board of review. Any party not
31 joining in the appeal shall be made a defendant; the board of review
32 shall be deemed to be a party to any judicial action involving the
33 review of, or appeal from, any of its decisions, and may be
34 represented in any such judicial action by any qualified attorney,
35 who may be a regular salaried employee of the board of review or
36 has been designated by it for that purpose, or, at the board of
37 review's request, by the Attorney General.

38 (i) Failure to give notice. The failure of any public officer or
39 employee at any time heretofore or hereafter to give notice of
40 determination or decision required in subsections (b), (c) and (e) of
41 this section, as originally passed or amended, shall not relieve any
42 employer's account of any charge by reason of any benefits paid,
43 unless and until that employer can show to the satisfaction of the
44 director of the division that the said benefits, in whole or in part,
45 would not have been charged or chargeable to his account had such
46 notice been given. Any determination hereunder by the director
47 shall be subject to court review.

48 (cf: P.L.1984, c.24, s.4)

1 2. R.S.43:21-16 is amended to read as follows:

2 43:21-16. (a) Whoever makes a false statement or representation,
3 knowing it to be false, or knowingly fails to disclose a material fact,
4 to obtain or increase or attempts to obtain or increase any benefit or
5 other payment under this chapter (R.S.43:21-1 et seq.), or under an
6 employment security law of any other state or of the federal
7 government, either for himself or for any other person, shall be
8 liable to a fine of \$20.00 for each offense, or 25% of the amount
9 fraudulently obtained, whichever is greater, to be recovered in an
10 action at law in the name of the Division of Unemployment and
11 Temporary Disability Insurance of the Department of Labor and
12 Workforce Development of the State of New Jersey or as provided
13 in subsection (e) of R.S.43:21-14, said fine when recovered to be
14 paid to the unemployment compensation auxiliary fund for the use
15 of said fund; and each such false statement or representation or
16 failure to disclose a material fact shall constitute a separate offense.
17 Any penalties imposed by this subsection shall be in addition to
18 those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

19 (b) (1) An employing unit or any officer or agent of an
20 employing unit or any other person who makes a false statement or
21 representation, knowing it to be false, or who knowingly fails to
22 disclose a material fact, to prevent or reduce the payment of
23 benefits to any individual entitled thereto or to avoid becoming or
24 remaining subject hereto or to avoid or reduce any contribution or
25 other payment required from an employing unit under this chapter
26 (R.S.43:21-1 et seq.), or under an employment security law of any
27 other state or of the federal government, or who willfully fails or
28 refuses to furnish any reports required hereunder (except for such
29 reports as may be required under subsection (b) of R.S.43:21-6) or
30 to produce or permit the inspection or copying of records, as
31 required hereunder, shall be liable to a fine of \$100.00, or 25% of
32 the amount fraudulently withheld, whichever is greater, to be
33 recovered in an action at law in the name of the Division of
34 Unemployment and Temporary Disability Insurance of the
35 Department of Labor and Workforce Development of the State of
36 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
37 fine when recovered to be paid to the unemployment compensation
38 auxiliary fund for the use of said fund; and each such false
39 statement or representation or failure to disclose a material fact, and
40 each day of such failure or refusal shall constitute a separate
41 offense. Any penalties imposed by this paragraph shall be in
42 addition to those otherwise prescribed in this chapter (R.S.43:21-1
43 et seq.).

44 (2) Any employing unit or any officer or agent of an employing
45 unit or any other person who fails to submit any report required
46 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
47 \$25.00 for the first report not submitted within 10 days after the
48 mailing of a request for such report, and an additional \$25.00

1 penalty may be assessed for the next 10-day period, which may
2 elapse after the end of the initial 10-day period and before the
3 report is filed; provided that when such report or reports are not
4 filed within the prescribed time but it is shown to the satisfaction of
5 the director that the failure was due to a reasonable cause, no such
6 penalty shall be imposed. Any penalties imposed by this paragraph
7 shall be recovered as provided in subsection (e) of R.S.43:21-14,
8 and when recovered shall be paid to the unemployment
9 compensation auxiliary fund for the use of said fund.

10 (3) Any employing unit, officer or agent of the employing unit,
11 or any other person, determined by the controller to have knowingly
12 violated, or attempted to violate, or advised another person to
13 violate the transfer of employment experience provisions found at
14 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
15 a lower rate of contributions by failing to disclose material
16 information, or by making a false statement, or by a
17 misrepresentation of fact, shall be subject to a fine of \$5,000 or
18 25% of the contributions under-reported or attempted to be under-
19 reported, whichever is greater, to be recovered as provided in
20 subsection (e) of R.S. 43:21-14, and when recovered to be paid to
21 the unemployment compensation auxiliary fund for the use of said
22 fund. For the purposes of this subsection, “knowingly” means
23 having actual knowledge of, or acting with deliberate ignorance or
24 reckless disregard for the prohibition involved.

25 (c) Any person who shall willfully violate any provision of this
26 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,
27 the violation of which is made unlawful or the observance of which
28 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
29 for which a penalty is neither prescribed herein nor provided by any
30 other applicable statute, shall be liable to a fine of \$50.00, to be
31 recovered in an action at law in the name of the Division of
32 Unemployment and Temporary Disability Insurance of the
33 Department of Labor and Workforce Development of the State of
34 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
35 fine when recovered to be paid to the unemployment compensation
36 auxiliary fund for the use of said fund; and each day such violation
37 continues shall be deemed to be a separate offense.

38 (d) (1) When it is determined by a representative or
39 representatives designated by the Director of the Division of
40 Unemployment and Temporary Disability Insurance of the
41 Department of Labor and Workforce Development of the State of
42 New Jersey that any person, ~~whether (i)~~ ³whether (i) ³by reason
43 of the ~~fraudulent or knowing~~ ³fraudulent or knowing ³nondisclosure or
44 misrepresentation by him or by another of a material fact ~~[(whether~~
45 or not such nondisclosure or misrepresentation was known or
46 fraudulent), or (ii) for any other reason] ³(whether or not such
47 nondisclosure or misrepresentation was known or fraudulent), or (ii)

1 for any other reason³, has received any sum as benefits under this
2 chapter (R.S.43:21-1 et seq.) while any conditions for the receipt of
3 benefits imposed by this chapter (R.S.43:21-1 et seq.) were not
4 fulfilled in his case, or while he was disqualified from receiving
5 benefits, or while otherwise not entitled to receive such sum as
6 benefits, such person, unless the director (with the concurrence of
7 the controller) directs otherwise by regulation, shall be liable to
8 repay those benefits in full. ³[If the representative finds that the
9 person received an overpayment of benefits for any reason other
10 than fraudulent or knowing nondisclosure or misrepresentation or
11 because the person has been found, after a prior determination, to
12 have become ineligible for part or all of the benefits, the person
13 shall not be liable for any overpayment which occurred before the
14 finding of the overpayment.]³ ²The employer's account shall not
15 be charged for the amount of an overpayment of benefits if the
16 overpayment was caused by an error of the division and not by any
17 error of the employer.² The sum shall be deducted from any future
18 benefits payable to the individual under this chapter (R.S.43:21-1 et
19 seq.) or shall be paid by the individual to the division for the
20 unemployment compensation fund, and such sum shall be
21 collectible in the manner provided for by law, including, but not
22 limited to, the filing of a certificate of debt with the Clerk of the
23 Superior Court of New Jersey; provided, however, that, except in
24 the event of fraud, no person shall be liable for any such refunds or
25 deductions against future benefits unless so notified before four
26 years have elapsed from the time the benefits in question were paid.
27 Such person shall be promptly notified of the determination and the
28 reasons therefor. ²[Unless such person,] The determination shall be
29 final unless the person files an appeal of the determination within
30 seven calendar days after the delivery of the determination, or
31 within 10 calendar days after such notification was mailed to his
32 last-known address, for any determination made on or before
33 December 1, 2010, and any initial determination made pursuant to
34 paragraph (1) of subsection (b) of R.S.43:21-6 after December 1,
35 2010, or² within ¹[seven] 20¹ calendar days after the delivery of
36 such determination, or within **[10]** 20 calendar days after such
37 notification was mailed to his last-known address, ²[files an appeal
38 from such determination, such determination shall be final] for any
39 determination other than an initial determination made after
40 December 1, 2010².

41 (2) Interstate and cross-offset of state and federal unemployment
42 benefits. To the extent permissible under the laws and Constitution
43 of the United States, the commissioner is authorized to enter into or
44 cooperate in arrangements or reciprocal agreements with
45 appropriate and duly authorized agencies of other states or the
46 United States Secretary of Labor, or both, whereby:

1 (A) Overpayments of unemployment benefits as determined
2 under subsection (d) of R.S.43:21-16 shall be recovered by offset
3 from unemployment benefits otherwise payable under the
4 unemployment compensation law of another state, and
5 overpayments of unemployment benefits as determined under the
6 unemployment compensation law of another state shall be
7 recovered by offset from unemployment benefits otherwise payable
8 under R.S.43:21-1 et seq.; and

9 (B) Overpayments of unemployment benefits as determined
10 under applicable federal law, with respect to benefits or allowances
11 for unemployment provided under a federal program administered
12 by this State under an agreement with the United States Secretary of
13 Labor, shall be recovered by offset from unemployment benefits
14 otherwise payable under R.S.43:21-1 et seq., or any federal program
15 administered by this State, or under the unemployment
16 compensation law of another state or any federal unemployment
17 benefit or allowance program administered by another state under
18 an agreement with the United States Secretary of Labor, if the other
19 state has in effect a reciprocal agreement with the United States
20 Secretary of Labor as authorized by subsection (g) of 42
21 U.S.C.s.503, and if the United States agrees, as provided in the
22 reciprocal agreement with this State entered into under subsection
23 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits
24 as determined under subsection (d) of R.S.43:21-16 and
25 overpayments as determined under the unemployment
26 compensation law of another state which has in effect a reciprocal
27 agreement with the United States Secretary of Labor as authorized
28 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset
29 from benefits or allowances otherwise payable under a federal
30 program administered by this State or another state under an
31 agreement with the United States Secretary of Labor.

32 (e) (1) Any employing unit, or any officer or agent of an
33 employing unit, which officer or agent is directly or indirectly
34 responsible for collecting, truthfully accounting for, remitting when
35 payable any contribution, or filing or causing to be filed any report
36 or statement required by this chapter, or employer, or person failing
37 to remit, when payable, any employer contributions, or worker
38 contributions (if withheld or deducted), or the amount of such
39 worker contributions (if not withheld or deducted), or filing or
40 causing to be filed with the controller or the Division of
41 Unemployment and Temporary Disability Insurance of the
42 Department of Labor and Workforce Development of the State of
43 New Jersey, any false or fraudulent report or statement, and any
44 person who aids or abets an employing unit, employer, or any
45 person in the preparation or filing of any false or fraudulent report
46 or statement with intent to defraud the State of New Jersey or an
47 employment security agency of any other state or of the federal
48 government, or with intent to evade the payment of any

1 contributions, interest or penalties, or any part thereof, which shall
2 be due under the provisions of this chapter (R.S.43:21-1 et seq.),
3 shall be liable for each offense upon conviction before any Superior
4 Court or municipal court, to a fine not to exceed \$1,000.00 or by
5 imprisonment for a term not to exceed 90 days, or both, at the
6 discretion of the court. The fine upon conviction shall be payable to
7 the unemployment compensation auxiliary fund. Any penalties
8 imposed by this subsection shall be in addition to those otherwise
9 prescribed in this chapter (R.S.43:21-1 et seq.).

10 (2) Any employing unit, officer or agent of the employing unit,
11 or any other person, who knowingly violates, or attempts to violate,
12 or advise another person to violate the transfer of employment
13 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
14 conviction before any Superior Court or municipal court, guilty of a
15 crime of the fourth degree. For the purposes of this subsection,
16 "knowingly" means having actual knowledge of, or acting with
17 deliberate ignorance or reckless disregard for the prohibition
18 involved.

19 (f) Any employing unit or any officer or agent of an employing
20 unit or any other person who aids and abets any person to obtain
21 any sum of benefits under this chapter to which he is not entitled, or
22 a larger amount as benefits than that to which he is justly entitled,
23 shall be liable for each offense upon conviction before any Superior
24 Court or municipal court, to a fine not to exceed \$1,000.00 or by
25 imprisonment for a term not to exceed 90 days, or both, at the
26 discretion of the court. The fine upon conviction shall be payable to
27 the unemployment compensation auxiliary fund. Any penalties
28 imposed by this subsection shall be in addition to those otherwise
29 prescribed in this chapter (R.S.43:21-1 et seq.).

30 (g) There shall be created in the Division of Unemployment and
31 Temporary Disability Insurance of the Department of Labor and
32 Workforce Development of the State of New Jersey an investigative
33 staff for the purpose of investigating violations referred to in this
34 section and enforcing the provisions thereof.

35 (h) An employing unit or any officer or agent of an employing
36 unit who makes a false statement or representation, knowing it to be
37 false, or who knowingly fails to disclose a material fact, to reduce
38 benefit charges to the employing unit pursuant to paragraph (1) of
39 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
40 be recovered in an action at law in the name of the Division of
41 Unemployment and Temporary Disability Insurance of the
42 Department of Labor and Workforce Development of the State of
43 New Jersey or as provided in subsection (e) of R.S.43:21-14. The
44 fine when recovered shall be paid to the unemployment
45 compensation auxiliary fund for the use of the fund. Each false
46 statement or representation or failure to disclose a material fact, and
47 each day of that failure or refusal shall constitute a separate offense.

1 Any penalties imposed by this subsection shall be in addition to
2 those otherwise prescribed in R.S.43:21-1 et seq.

3 (cf: P.L.2005, c.239, s.4)

4

5 3. (New section) a. An authorized agent who represents
6 parties for a fee shall not represent any party after ¹[June 30, 2011]
7 December 1, 2010¹ in any procedure with the division regarding
8 claims for unemployment benefits or any obligations of employers
9 regarding charges or taxes for unemployment compensation,
10 including any filing of information, or any appeal, hearing, or other
11 proceeding regarding unemployment benefit claims, charges or
12 taxes before any representative of the division, unless the
13 authorized agent is registered with the division pursuant to this
14 section.

15 b. Each authorized agent shall register with the division using
16 forms provided by the division. An applying authorized agent who
17 is an individual shall provide the individual's name, permanent
18 address and telephone number. An authorized agent which is an
19 organization or business shall provide the name, local address and
20 telephone numbers, and address and telephone number of the
21 principal place of business, if different, and the names of principals
22 or others authorized to act on behalf of the organization and to
23 receive notice. Any changes in identifying information shall be
24 promptly reported to the division. ²The division may elect to set by
25 regulation a schedule of fees for the registration of agents required
26 by this section, except that if the division elects to set a schedule of
27 fees pursuant to this subsection, the amount collected in fees shall
28 not exceed the amount determined by the director of the division to
29 be necessary for the implementation of the provisions of sections 3
30 through 9 of this act.²

31 c. Upon registration, an authorized agent shall be assigned a
32 registration number that shall be used in all communications with,
33 or appearances before, any representative of the division. An
34 individual communicating or appearing on behalf of an organization
35 or business providing representation for a fee to parties before any
36 representative of the division shall indicate the registration number
37 of the individual, unless that individual is an attorney, and the
38 registration number of the organization or business, and the division
39 shall not accept any representation of the party in a communication
40 with, or proceeding of, the division by an individual, organization
41 or business if the number or numbers are not provided. If an
42 attorney is employed by, or otherwise provides service to, an
43 organization or business which is an authorized agent, the
44 registration number of the organization or business shall be
45 provided.

46 d. Each registrant shall file notice with the division within
47 thirty days after the agent ceases activity as an authorized agent.

1 4. (New section) a. An authorized agent shall keep any party
2 that is a client of the agent reasonably informed about the status of
3 any matter before the division and verify with the client the
4 accuracy of any information it provides to the division.

5 b. An authorized agent shall promptly notify the client of any
6 scheduled proceedings before any representative of the division to
7 allow time for case preparation and the scheduling of witnesses.
8 Clients shall be apprised of the consequences of not appearing and
9 the importance of participation at all stages of the proceedings and
10 of producing first-hand testimony.

11 c. If a client determines that it does not wish to pursue an
12 appeal, a request for withdrawal of the appeal shall be made in
13 writing, or communicated orally and followed by a written request,
14 in a timely fashion. If the client and the authorized agent determine
15 that there is no basis for an appeal, that the appeal is frivolous, or
16 that the client is not interested in pursuing the appeal, the appeal
17 shall be withdrawn, as soon as possible, and prior to the scheduling
18 of a hearing if possible.

19
20 5. (New section) a. If an authorized agent believes that a
21 critical witness will not be available for a scheduled hearing and
22 requests a postponement in order to produce the witness, the
23 authorized agent shall, after consulting with the client, provide the
24 division with the name, address, and title of the witness, the reason
25 the witness is unable to attend, the general nature and importance of
26 the witness's testimony, and an explanation of why there is no other
27 witness able to provide the essential testimony that the critical
28 witness would provide. Upon request, the authorized agent shall
29 submit a written statement of its request and supporting
30 documentation or sworn affidavit to the division.

31 b. If a postponement request is denied, the authorized agent
32 shall notify the client that the hearing will go forward as scheduled
33 and advise the client to appear. In the event that a postponement
34 request made pursuant to subsection a. of this section is denied, the
35 client shall be advised to appear with or without the critical witness
36 or another witness, and that it may renew the postponement request
37 at the hearing by requesting a continuance of the hearing.

38 c. In the event that the client or agent does not appear at a
39 scheduled hearing without requesting a postponement, or that a
40 postponement request is made but properly denied and the agent or
41 the client does not appear, no further hearings will be scheduled at
42 the request of the client or agent², unless the client or agent can
43 demonstrate to the satisfaction of a representative of the division
44 that the failure to appear was due to circumstances beyond the
45 control of the client or agent².

46
47 6. (New section) a. An authorized agent shall provide
48 competent representation to each party that is a client of the agent.

1 The authorized agent shall explain the proceedings and prepare the
2 case with the client and any witnesses before any division hearing is
3 called, shall be acquainted with the facts and legal issues involved,
4 and shall arrange for producing witnesses and documentary
5 evidence at the hearing.

6 b. An authorized agent shall make a reasonable effort to have
7 testimony given by first-hand witnesses in the case.

8 c. An authorized agent seeking to inspect or review a case file
9 may do so prior to the date of the hearing. If it is necessary for the
10 authorized agent to review the file on the day of the hearing, the
11 authorized agent shall make arrangements with the division in
12 advance of the scheduled hearing time.

13 d. An authorized agent shall not delay the hearing or disturb
14 the progress of other cases or the functioning of the division in an
15 effort to view a case file or consult with its client or witnesses.

16

17 7. (New section) An authorized agent shall be prepared to
18 produce all necessary evidence and witnesses at the time the
19 hearing is scheduled to commence and provide, prior to the date of
20 the hearing, to all parties copies of any documentary evidence to be
21 admitted into the record. An authorized agent shall not:

22 a. Engage in, or counsel or assist any party that is a client to
23 engage in, conduct which the authorized agent knows or should
24 know to be criminal, in violation of the provisions of sections 3
25 through 9 of this act or other provisions of this chapter (R.S.43:21-1
26 et seq.), or is prejudicial to, or unnecessarily delays, the efficient
27 administration of this chapter (R.S.43:21-1 et seq.), including any
28 failure to be, without good cause, available and properly prepared to
29 participate in appeals, hearings and other procedures at the
30 scheduled times;

31 b. Engage in, or counsel or assist any party that is a client to
32 engage in, conduct involving dishonesty, fraud, deceit,
33 misrepresentation, or the withholding of material facts.

34 c. Unlawfully obstruct another party's access to evidence or
35 destroy or conceal evidence; assert personal knowledge of the facts
36 unless testifying as a witness;

37 d. Refer at a hearing to a matter which the authorized agent
38 does not reasonably believe is relevant or is not supported by
39 evidence;

40 e. Seek to improperly influence any representative of the
41 division; or

42 f. Engage in any ex parte communication with any
43 representative of the division concerning the merits of any pending
44 appeal unless all other parties have waived their right to participate.

45

46 8. (New section) a. If the commissioner determines that an
47 authorized agent has exhibited a pattern of repeated violations of
48 the provisions of sections 3 through 9 of this act or other provisions

1 of this chapter (R.S.43:21-1 et seq.), including any violations of the
2 provisions of R.S.43:21-16 which apply to the agents of employing
3 units, the commissioner shall, in addition to any other actions taken
4 in the enforcement of this chapter, notify the authorized agent of
5 this finding and that the commissioner will monitor the authorized
6 agent to ascertain whether the violations continue after the
7 notification.

8 b. If, at the conclusion of a monitoring period of not more than
9 12 months after the first determination, the commissioner
10 determines that the agent has continued the pattern of repeated
11 violations of the provisions, the commissioner:

12 (1) May, after affording the authorized agent notice and an
13 opportunity for a hearing in accordance with the provisions of the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), suspend the registration of the authorized agent, for a period
16 of time determined by the commissioner. In determining the length
17 of a suspension, the commissioner shall distinguish between serious
18 violations which potentially undermine the integrity of the benefit
19 determination and appeals processes and lesser violations, and shall
20 consider any of the following factors which are relevant: whether
21 the violations represent a continuation of the violations identified in
22 the previous determination, the gravity and duration of the
23 violations, the amount of harm resulting from the violations, the
24 experience of the authorized agent, the authorized agent's history of
25 previous violations or complaints filed of a similar or different
26 nature, the number of violations identified, and the existence of
27 mitigating circumstances, whether the authorized agent made good
28 faith efforts to comply with any applicable requirements, and any
29 other factors the commissioner considers relevant.

30 (2) Shall continue to monitor the conduct of the authorized
31 agent for a period of not more than 12 months after the
32 determination made pursuant to this subsection b.

33 c. If, in the subsequent monitoring of the conduct of the
34 authorized agent pursuant to subsection b. of this section, the
35 commissioner determines that the authorized agent has continued
36 the pattern of repeated violations, the commissioner, after affording
37 the authorized agent notice and an opportunity for a hearing in
38 accordance with the provisions of the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall revoke the
40 registration of the authorized agent.

41 An authorized agent representing an employer shall be regarded
42 as an agent of an employing unit for the purposes of R.S.43:21-16
43 and be subject to, in addition to the provisions of this section, all
44 requirements and penalties imposed pursuant to that section for a
45 agent of an employing unit.

46 Any individual, organization or business which, after notification
47 of the registration requirements of sections 3 through 9 of this act,
48 operates, or attempts to operate, as an authorized agent without the

1 required registration, shall be liable to a fine of \$1,000 for each
2 violation, to be recovered in an action at law in the name of the
3 division, and shall not be permitted by the division to represent any
4 party in connection with any communication with, or preceding of,
5 the division.

6

7 9. (New section) For the purposes of sections 3 through 9 of
8 this act:

9 “Authorized agent” means an individual, organization or
10 business that, for a fee, provides representation to parties in
11 communications with, or hearings or other proceedings before,
12 representatives of the division in connection with claims for
13 unemployment benefits, charges or tax assessments. In the case of
14 an individual authorized agent representing an organization or
15 business that provides representation to parties for a fee, both the
16 individual and the organization or business shall register with the
17 division and both will be held responsible as the authorized agents.
18 An attorney is not an authorized agent for purposes of this section
19 and is not required to register. If an attorney is employed by, or
20 otherwise provides service to, an organization or business which is
21 an authorized agent, the organization or business shall register with
22 the division and will be considered the authorized agent for
23 purposes of this section. An authorized agent representing an
24 employer shall be regarded as an agent of an employing unit for the
25 purposes of R.S.43:21-16 and be subject to all requirements and
26 penalties imposed by that section for an agent of an employing unit.

27 “Party” means any of the following parties to an appeal, hearing
28 or other procedure of the division: the division; a claimant for
29 unemployment compensation; or any employer against whom
30 charges may be made or tax liability may be assessed due to the
31 claim for unemployment compensation.

32 “Representative of the division” means any individual or entity,
33 including any deputy, appeal tribunal, the board of review or any
34 other individual or entity which represents the Division of
35 Unemployment and Temporary Disability Insurance of the
36 Department of Labor and Workforce Development in connection
37 with claims, benefits, charges or taxes for unemployment
38 compensation.

39

40 10. This act shall take effect immediately.

SENATE, No. 1968

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 20, 2010

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Revises certain unemployment benefit claim procedures and requires registration of authorized agents of parties to the procedures.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unemployment compensation and amending
2 and supplementing chapter 21 of Title 43 of the Revised Statutes.

3

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

6

7 1. R.S.43:21-6 is amended to read as follows:

8 43:21-6 (a) Filing. Claims for benefits shall be made in
9 accordance with such regulations as the Director of the Division of
10 Unemployment and Temporary Disability Insurance of the
11 Department of Labor and Workforce Development of the State of
12 New Jersey may approve. Each employer shall post and maintain
13 on his premises printed notices of his subject status, of such design,
14 in such numbers and at such places as the director of the division
15 may determine to be necessary to give notice thereof to persons in
16 the employer's service. Each employer shall give to each individual
17 at the time he becomes unemployed a printed copy of benefit
18 instructions. Both the aforesaid notices and instructions shall be
19 supplied by the division to employers without cost to them.

20 (b)(1) Procedure for making initial determinations with respect
21 to benefit years commencing on or after January 1, 1953.

22 A representative or representatives designated by the director of
23 the division and hereafter referred to as a "deputy" shall promptly
24 examine the claim, and shall notify the most recent employing unit
25 and, successively as necessary, each employer in inverse
26 chronological order during the base year. Such notification shall
27 require said employing unit and employer to furnish such
28 information to the deputy as may be necessary to determine the
29 claimant's eligibility and his benefit rights with respect to the
30 employer in question.

31 In his discretion, the director may appoint special deputies to
32 make initial or subsequent determinations under **[subsections 4(f)**
33 **and 5(d) of this chapter]** subsection (f) of R.S.43:21-4 and
34 subsection (d) of R.S.43-21-5.

35 If any employer or employing unit fails to respond to the request
36 for information within 10 days after the mailing, or communicating
37 by electronic means, of such request, the deputy shall rely entirely
38 on information from other sources, including an affidavit to the best
39 of the knowledge and belief of the claimant with respect to his
40 wages and time worked. Except in the event of fraud, if it is
41 determined that any information in such affidavit is erroneous, no
42 penalty, or refund liability for resulting benefit overpayments prior
43 to the receipt of the employer's reply, shall be imposed on the
44 claimant.

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 The deputy shall promptly make an initial determination based
2 upon the available information. The initial determination shall
3 show the weekly benefit amount payable, the maximum duration of
4 benefits with respect to the employer to whom the determination
5 relates, and the ratio of benefits chargeable to the employer's
6 account for benefit years commencing on or after July 1, 1986, and
7 also shall show whether the claimant is ineligible or disqualified for
8 benefits under the initial determination. The claimant and the
9 employer whose account may be charged for benefits payable
10 pursuant to said determination shall be promptly notified thereof.

11 Whenever an initial determination is based upon information
12 other than that supplied by an employer because such employer
13 failed to respond to the deputy's request for information, such initial
14 determination and any subsequent determination thereunder shall be
15 incontestable by the noncomplying employer, as to any charges to
16 his employer's account because of benefits paid prior to the close of
17 the calendar week following the receipt of his reply. Such initial
18 determination shall be altered if necessary upon receipt of
19 information from the employer, and any benefits paid or payable
20 with respect to weeks occurring subsequent to the close of the
21 calendar week following the receipt of the employer's reply shall be
22 paid in accordance with such altered initial determination.

23 The deputy shall issue a separate initial benefit determination
24 with respect to each of the claimant's base year employers, starting
25 with the most recent employer and continuing as necessary in the
26 inverse chronological order of the claimant's last date of
27 employment with each such employer. If an appeal is taken from
28 an initial determination, as hereinafter provided, by any employer
29 other than the first chargeable base year employer or for benefit
30 years commencing on or after July 1, 1986, that employer from
31 whom the individual was most recently separated, then such appeal
32 shall be limited in scope to include only one or more of the
33 following matters:

34 (A) The correctness of the benefit payments authorized to be
35 made under the determination;

36 (B) Fraud in connection with the claim pursuant to which the
37 initial determination is issued; or

38 (C) The refusal of suitable work offered by the chargeable
39 employer filing the appeal;

40 (D) Gross misconduct as provided in subsection (b) of R.S.
41 43:21-5.

42 The amount of benefits payable under an initial determination
43 may be reduced or canceled if necessary to avoid payment of
44 benefits for a number of weeks in excess of the maximum specified
45 in subsection (d) of **[section] R.S. 43:21-3 [of this Title]**.

46 Unless the claimant or any interested party, within **[seven] 20**
47 calendar days after delivery of notification of an initial
48 determination or **[within 10 calendar days]** after such notification

1 was mailed to his or their last-known address and addresses, files an
2 appeal from such decision, such decision shall be final and benefits
3 shall be paid or denied in accordance therewith, except for such
4 determinations as may be altered in benefit amounts or duration as
5 provided in this paragraph. Benefits payable for periods pending an
6 appeal and not in dispute shall be paid as such benefits accrue;
7 provided that insofar as any such appeal is or may be an appeal
8 from a determination to the effect that the claimant is disqualified
9 under the provisions of R.S. 43:21-5 or any amendments thereof or
10 supplements thereto, benefits pending determination of the appeal
11 shall be withheld only for the period of disqualification as provided
12 for in said section, and notwithstanding such appeal, the benefits
13 otherwise provided by this act shall be paid for the period
14 subsequent to such period of disqualification; and provided, also,
15 that if there are two determinations of entitlement, benefits for the
16 period covered by such determinations shall be paid regardless of
17 any appeal which may thereafter be taken, but no employer's
18 account shall be charged with benefits so paid, if the decision is
19 finally reversed.

20 (2) Procedure for making initial determinations in certain cases
21 of concurrent employment, with respect to benefit years
22 commencing on or after January 1, 1953 and prior to benefit years
23 commencing on or after July 1, 1986.

24 Notwithstanding any other provisions of this Title, if an
25 individual shows to the satisfaction of the deputy that there were at
26 least 13 weeks in his base period in each of which he earned wages
27 from two or more employers totaling \$30.00 or more but in each of
28 which there was no single employer from whom he earned as much
29 as \$100.00, then such individual's claim shall be determined in
30 accordance with the special provisions of this paragraph. In such
31 case, the deputy shall determine the individual's eligibility for
32 benefits, his average weekly wage, weekly benefit rate and
33 maximum total benefits as if all his base year employers were a
34 single employer. Such determination shall apportion the liability
35 for benefit charges thereunder to the individual's several base year
36 employers so that each employer's maximum liability for charges
37 thereunder bears approximately the same relation to the maximum
38 total benefits allowed as the wages earned by the individual from
39 each employer during the base year bears to his total wages earned
40 from all employers during the base year. Such initial determination
41 shall also specify the individual's last date of employment within
42 the base year with respect to each base year employer, and such
43 employers shall be charged for benefits paid under said initial
44 determination in the inverse chronological order of such last date of
45 employment.

46 (3) Procedure for making subsequent determinations with respect
47 to benefit years commencing on or after January 1, 1953. The
48 deputy shall make determinations with respect to claims for benefits

1 thereafter in the course of the benefit year, in accordance with any
2 initial determination allowing benefits, and under which benefits
3 have not been exhausted, and each notification of a benefit payment
4 shall be a notification of an affirmative subsequent determination.
5 The allowance of benefits by the deputy on any such determination,
6 or the denial of benefits by the deputy on any such determination,
7 shall be appealable in the same manner and under the same
8 limitations as is provided in the case of initial determinations.

9 (c) Appeals. Unless such appeal is withdrawn, an appeal
10 tribunal, after affording the parties reasonable opportunity for fair
11 hearing, shall affirm or modify the findings of fact and the
12 determination. The parties shall be duly notified of such tribunal's
13 decision, together with its reasons therefor, which shall be deemed
14 to be the final decision of the board of review, unless within **[10]**
15 20 days after the date of notification or mailing of such decision,
16 further appeal is initiated pursuant to subsection (e) of this section.

17 (d) Appeal tribunals. To hear and decide disputed benefit
18 claims, including appeals from determinations with respect to
19 demands for refunds of benefits under **[section 43:21-16(d) of this**
20 **chapter (R.S. 43:21-1 et seq.)]** subsection d. of R.S. 43:21-16, the
21 director with the approval of the Commissioner of Labor shall
22 establish impartial appeal tribunals consisting of a salaried body of
23 examiners under the supervision of a Chief Appeals Examiner, all
24 of whom shall be appointed pursuant to the provisions of Title 11 of
25 the Revised Statutes, Civil Service and other applicable statutes.

26 (e) Board of review. The board of review may on its own
27 motion affirm, modify, or set aside any decision of an appeal
28 tribunal on the basis of the evidence previously submitted in such
29 case, or direct the taking of additional evidence, or may permit any
30 of the parties to such decision to initiate further appeals before it.
31 The board of review shall permit such further appeal by any of the
32 parties interested in a decision of an appeal tribunal which is not
33 unanimous and from any determination which has been overruled or
34 modified by any appeal tribunal. The board of review may remove
35 to itself or transfer to another appeal tribunal the proceedings on
36 any claim pending before an appeal tribunal. Any proceedings so
37 removed to the board of review shall be heard by a quorum thereof
38 in accordance with the requirements of subsection (c) of this
39 section. The board of review shall promptly notify the interested
40 parties of its findings and decision.

41 (f) Procedure. The manner in which disputed benefit claims,
42 and appeals from determinations with respect to (1) claims for
43 benefits and (2) demands for refunds of benefits under **[section**
44 **43:21-16(d) of this chapter (R.S. 43:21-1 et seq.)]** subsection (d) of
45 R.S.43:21-16 shall be presented, the reports thereon required from
46 the claimant and from employers, and the conduct of hearings and
47 appeals shall be in accordance with rules prescribed by the board of

1 review for determining the rights of the parties, whether or not such
2 rules conform to common law or statutory rules of evidence and
3 other technical rules of procedure. A full and complete record shall
4 be kept of all proceedings in connection with a disputed claim. All
5 testimony at any hearing upon a disputed claim shall be recorded,
6 but need not be transcribed unless the disputed claim is further
7 appealed.

8 (g) Witness fees. Witnesses subpoenaed pursuant to this section
9 shall be allowed fees at a rate fixed by the director. Such fees and
10 all expenses of proceedings involving disputed claims shall be
11 deemed a part of the expense of administering this chapter (R.S.
12 43:21-1 et seq.).

13 (h) Court review. Any decision of the board of review shall
14 become final as to any party upon the mailing of a copy thereof to
15 such party or to his attorney, or upon the mailing of a copy thereof
16 to such party at his last-known address. The Division of
17 Unemployment and Temporary Disability Insurance and any party
18 to a proceeding before the board of review may secure judicial
19 review of the final decision of the board of review. Any party not
20 joining in the appeal shall be made a defendant; the board of
21 review shall be deemed to be a party to any judicial action
22 involving the review of, or appeal from, any of its decisions, and
23 may be represented in any such judicial action by any qualified
24 attorney, who may be a regular salaried employee of the board of
25 review or has been designated by it for that purpose, or, at the board
26 of review's request, by the Attorney General.

27 (i) Failure to give notice. The failure of any public officer or
28 employee at any time heretofore or hereafter to give notice of
29 determination or decision required in subsections (b), (c) and (e) of
30 this section, as originally passed or amended, shall not relieve any
31 employer's account of any charge by reason of any benefits paid,
32 unless and until that employer can show to the satisfaction of the
33 director of the division that the said benefits, in whole or in part,
34 would not have been charged or chargeable to his account had such
35 notice been given. Any determination hereunder by the director
36 shall be subject to court review.

37 (cf: P.L.1984, c.24, s.4)

38

39 2. R.S.43:21-16 is amended to read as follows:

40 43:21-16. (a) Whoever makes a false statement or
41 representation, knowing it to be false, or knowingly fails to disclose
42 a material fact, to obtain or increase or attempts to obtain or
43 increase any benefit or other payment under this chapter
44 (R.S.43:21-1 et seq.), or under an employment security law of any
45 other state or of the federal government, either for himself or for
46 any other person, shall be liable to a fine of \$20.00 for each offense,
47 or 25% of the amount fraudulently obtained, whichever is greater,
48 to be recovered in an action at law in the name of the Division of

1 Unemployment and Temporary Disability Insurance of the
2 Department of Labor and Workforce Development of the State of
3 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
4 fine when recovered to be paid to the unemployment compensation
5 auxiliary fund for the use of said fund; and each such false
6 statement or representation or failure to disclose a material fact
7 shall constitute a separate offense. Any penalties imposed by this
8 subsection shall be in addition to those otherwise prescribed in this
9 chapter (R.S.43:21-1 et seq.).

10 (b) (1) An employing unit or any officer or agent of an
11 employing unit or any other person who makes a false statement or
12 representation, knowing it to be false, or who knowingly fails to
13 disclose a material fact, to prevent or reduce the payment of
14 benefits to any individual entitled thereto or to avoid becoming or
15 remaining subject hereto or to avoid or reduce any contribution or
16 other payment required from an employing unit under this chapter
17 (R.S.43:21-1 et seq.), or under an employment security law of any
18 other state or of the federal government, or who willfully fails or
19 refuses to furnish any reports required hereunder (except for such
20 reports as may be required under subsection (b) of R.S.43:21-6) or
21 to produce or permit the inspection or copying of records, as
22 required hereunder, shall be liable to a fine of \$100.00, or 25% of
23 the amount fraudulently withheld, whichever is greater, to be
24 recovered in an action at law in the name of the Division of
25 Unemployment and Temporary Disability Insurance of the
26 Department of Labor and Workforce Development of the State of
27 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
28 fine when recovered to be paid to the unemployment compensation
29 auxiliary fund for the use of said fund; and each such false
30 statement or representation or failure to disclose a material fact, and
31 each day of such failure or refusal shall constitute a separate
32 offense. Any penalties imposed by this paragraph shall be in
33 addition to those otherwise prescribed in this chapter (R.S.43:21-1
34 et seq.).

35 (2) Any employing unit or any officer or agent of an employing
36 unit or any other person who fails to submit any report required
37 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
38 \$25.00 for the first report not submitted within 10 days after the
39 mailing of a request for such report, and an additional \$25.00
40 penalty may be assessed for the next 10-day period, which may
41 elapse after the end of the initial 10-day period and before the
42 report is filed; provided that when such report or reports are not
43 filed within the prescribed time but it is shown to the satisfaction of
44 the director that the failure was due to a reasonable cause, no such
45 penalty shall be imposed. Any penalties imposed by this paragraph
46 shall be recovered as provided in subsection (e) of R.S.43:21-14,
47 and when recovered shall be paid to the unemployment
48 compensation auxiliary fund for the use of said fund.

1 (3) Any employing unit, officer or agent of the employing unit,
2 or any other person, determined by the controller to have knowingly
3 violated, or attempted to violate, or advised another person to
4 violate the transfer of employment experience provisions found at
5 R.S. 43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
6 a lower rate of contributions by failing to disclose material
7 information, or by making a false statement, or by a
8 misrepresentation of fact, shall be subject to a fine of \$5,000 or
9 25% of the contributions under-reported or attempted to be under-
10 reported, whichever is greater, to be recovered as provided in
11 subsection (e) of R.S. 43:21-14, and when recovered to be paid to
12 the unemployment compensation auxiliary fund for the use of said
13 fund. For the purposes of this subsection, “knowingly” means
14 having actual knowledge of, or acting with deliberate ignorance or
15 reckless disregard for the prohibition involved.

16 (c) Any person who shall willfully violate any provision of this
17 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,
18 the violation of which is made unlawful or the observance of which
19 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
20 for which a penalty is neither prescribed herein nor provided by any
21 other applicable statute, shall be liable to a fine of \$50.00, to be
22 recovered in an action at law in the name of the Division of
23 Unemployment and Temporary Disability Insurance of the
24 Department of Labor and Workforce Development of the State of
25 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
26 fine when recovered to be paid to the unemployment compensation
27 auxiliary fund for the use of said fund; and each day such violation
28 continues shall be deemed to be a separate offense.

29 (d)(1) When it is determined by a representative or
30 representatives designated by the Director of the Division of
31 Unemployment and Temporary Disability Insurance of the
32 Department of Labor and Workforce Development of the State of
33 New Jersey that any person, **【whether (i)】** by reason of the
34 fraudulent or knowing nondisclosure or misrepresentation by him or
35 by another of a material fact **【(whether or not such nondisclosure or**
36 **misrepresentation was known or fraudulent), or (ii) for any other**
37 **reason】**, has received any sum as benefits under this chapter
38 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
39 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
40 his case, or while he was disqualified from receiving benefits, or
41 while otherwise not entitled to receive such sum as benefits, such
42 person, unless the director (with the concurrence of the controller)
43 directs otherwise by regulation, shall be liable to repay those
44 benefits in full. If the representative finds that the person received
45 an overpayment of benefits for any reason other than fraudulent or
46 knowing nondisclosure or misrepresentation or because the person
47 has been found, after a prior determination, to have become
48 ineligible for part or all of the benefits, the person shall not be

1 liable for any overpayment which occurred before the finding of the
2 overpayment. The sum shall be deducted from any future benefits
3 payable to the individual under this chapter (R.S.43:21-1 et seq.) or
4 shall be paid by the individual to the division for the unemployment
5 compensation fund, and such sum shall be collectible in the manner
6 provided for by law, including, but not limited to, the filing of a
7 certificate of debt with the Clerk of the Superior Court of New
8 Jersey; provided, however, that, except in the event of fraud, no
9 person shall be liable for any such refunds or deductions against
10 future benefits unless so notified before four years have elapsed
11 from the time the benefits in question were paid. Such person shall
12 be promptly notified of the determination and the reasons therefor.
13 Unless such person, within seven calendar days after the delivery of
14 such determination, or within ~~10~~ 20 calendar days after such
15 notification was mailed to his last-known address, files an appeal
16 from such determination, such determination shall be final.

17 (2) Interstate and cross-offset of state and federal unemployment
18 benefits. To the extent permissible under the laws and Constitution
19 of the United States, the commissioner is authorized to enter into or
20 cooperate in arrangements or reciprocal agreements with
21 appropriate and duly authorized agencies of other states or the
22 United States Secretary of Labor, or both, whereby:

23 (A) Overpayments of unemployment benefits as determined
24 under subsection (d) of R.S.43:21-16 shall be recovered by offset
25 from unemployment benefits otherwise payable under the
26 unemployment compensation law of another state, and
27 overpayments of unemployment benefits as determined under the
28 unemployment compensation law of another state shall be
29 recovered by offset from unemployment benefits otherwise payable
30 under R.S.43:21-1 et seq.; and

31 (B) Overpayments of unemployment benefits as determined
32 under applicable federal law, with respect to benefits or allowances
33 for unemployment provided under a federal program administered
34 by this State under an agreement with the United States Secretary of
35 Labor, shall be recovered by offset from unemployment benefits
36 otherwise payable under R.S.43:21-1 et seq., or any federal program
37 administered by this State, or under the unemployment
38 compensation law of another state or any federal unemployment
39 benefit or allowance program administered by another state under
40 an agreement with the United States Secretary of Labor, if the other
41 state has in effect a reciprocal agreement with the United States
42 Secretary of Labor as authorized by subsection (g) of 42
43 U.S.C.s.503, and if the United States agrees, as provided in the
44 reciprocal agreement with this State entered into under subsection
45 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits
46 as determined under subsection (d) of R.S.43:21-16 and
47 overpayments as determined under the unemployment
48 compensation law of another state which has in effect a reciprocal

1 agreement with the United States Secretary of Labor as authorized
2 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset
3 from benefits or allowances otherwise payable under a federal
4 program administered by this State or another state under an
5 agreement with the United States Secretary of Labor.

6 (e) (1) Any employing unit, or any officer or agent of an
7 employing unit, which officer or agent is directly or indirectly
8 responsible for collecting, truthfully accounting for, remitting when
9 payable any contribution, or filing or causing to be filed any report
10 or statement required by this chapter, or employer, or person failing
11 to remit, when payable, any employer contributions, or worker
12 contributions (if withheld or deducted), or the amount of such
13 worker contributions (if not withheld or deducted), or filing or
14 causing to be filed with the controller or the Division of
15 Unemployment and Temporary Disability Insurance of the
16 Department of Labor and Workforce Development of the State of
17 New Jersey, any false or fraudulent report or statement, and any
18 person who aids or abets an employing unit, employer, or any
19 person in the preparation or filing of any false or fraudulent report
20 or statement with intent to defraud the State of New Jersey or an
21 employment security agency of any other state or of the federal
22 government, or with intent to evade the payment of any
23 contributions, interest or penalties, or any part thereof, which shall
24 be due under the provisions of this chapter (R.S.43:21-1 et seq.),
25 shall be liable for each offense upon conviction before any Superior
26 Court or municipal court, to a fine not to exceed \$1,000.00 or by
27 imprisonment for a term not to exceed 90 days, or both, at the
28 discretion of the court. The fine upon conviction shall be payable to
29 the unemployment compensation auxiliary fund. Any penalties
30 imposed by this subsection shall be in addition to those otherwise
31 prescribed in this chapter (R.S.43:21-1 et seq.).

32 (2) Any employing unit, officer or agent of the employing unit,
33 or any other person, who knowingly violates, or attempts to violate,
34 or advise another person to violate the transfer of employment
35 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
36 conviction before any Superior Court or municipal court, guilty of a
37 crime of the fourth degree. For the purposes of this subsection,
38 "knowingly" means having actual knowledge of, or acting with
39 deliberate ignorance or reckless disregard for the prohibition
40 involved.

41 (f) Any employing unit or any officer or agent of an employing
42 unit or any other person who aids and abets any person to obtain
43 any sum of benefits under this chapter to which he is not entitled, or
44 a larger amount as benefits than that to which he is justly entitled,
45 shall be liable for each offense upon conviction before any Superior
46 Court or municipal court, to a fine not to exceed \$1,000.00 or by
47 imprisonment for a term not to exceed 90 days, or both, at the
48 discretion of the court. The fine upon conviction shall be payable to

1 the unemployment compensation auxiliary fund. Any penalties
2 imposed by this subsection shall be in addition to those otherwise
3 prescribed in this chapter (R.S.43:21-1 et seq.).

4 (g) There shall be created in the Division of Unemployment and
5 Temporary Disability Insurance of the Department of Labor and
6 Workforce Development of the State of New Jersey an investigative
7 staff for the purpose of investigating violations referred to in this
8 section and enforcing the provisions thereof.

9 (h) An employing unit or any officer or agent of an employing
10 unit who makes a false statement or representation, knowing it to be
11 false, or who knowingly fails to disclose a material fact, to reduce
12 benefit charges to the employing unit pursuant to paragraph (1) of
13 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
14 be recovered in an action at law in the name of the Division of
15 Unemployment and Temporary Disability Insurance of the
16 Department of Labor and Workforce Development of the State of
17 New Jersey or as provided in subsection (e) of R.S.43:21-14. The
18 fine when recovered shall be paid to the unemployment
19 compensation auxiliary fund for the use of the fund. Each false
20 statement or representation or failure to disclose a material fact, and
21 each day of that failure or refusal shall constitute a separate offense.
22 Any penalties imposed by this subsection shall be in addition to
23 those otherwise prescribed in R.S.43:21-1 et seq.

24 (cf: P.L.2005, c.239, s.4)

25

26 3. (New section) a. An authorized agent who represents
27 parties for a fee shall not represent any party after June 30, 2011 in
28 any procedure with the division regarding claims for unemployment
29 benefits or any obligations of employers regarding charges or taxes
30 for unemployment compensation, including any filing of
31 information, or any appeal, hearing, or other proceeding regarding
32 unemployment benefit claims, charges or taxes before any
33 representative of the division, unless the authorized agent is
34 registered with the division pursuant to this section.

35 b. Each authorized agent shall register with the division using
36 forms provided by the division. An applying authorized agent who
37 is an individual shall provide the individual's name, permanent
38 address and telephone number. An authorized agent which is an
39 organization or business shall provide the name, local address and
40 telephone numbers, and address and telephone number of the
41 principal place of business, if different, and the names of principals
42 or others authorized to act on behalf of the organization and to
43 receive notice. Any changes in identifying information shall be
44 promptly reported to the division.

45 c. Upon registration, an authorized agent shall be assigned a
46 registration number that shall be used in all communications with,
47 or appearances before, any representative of the division. An
48 individual communicating or appearing on behalf of an organization

1 or business providing representation for a fee to parties before any
2 representative of the division shall indicate the registration number
3 of the individual, unless that individual is an attorney, and the
4 registration number of the organization or business, and the division
5 shall not accept any representation of the party in a communication
6 with, or proceeding of, the division by an individual, organization
7 or business if the number or numbers are not provided. If an
8 attorney is employed by, or otherwise provides service to, an
9 organization or business which is an authorized agent, the
10 registration number of the organization or business shall be
11 provided.

12 d. Each registrant shall file notice with the division within
13 thirty days after the agent ceases activity as an authorized agent.

14

15 4. (New section) a. An authorized agent shall keep any party
16 that is a client of the agent reasonably informed about the status of
17 any matter before the division and verify with the client the
18 accuracy of any information it provides to the division.

19 b. An authorized agent shall promptly notify the client of any
20 scheduled proceedings before any representative of the division to
21 allow time for case preparation and the scheduling of witnesses.
22 Clients shall be apprised of the consequences of not appearing and
23 the importance of participation at all stages of the proceedings and
24 of producing first-hand testimony.

25 c. If a client determines that it does not wish to pursue an
26 appeal, a request for withdrawal of the appeal shall be made in
27 writing, or communicated orally and followed by a written request,
28 in a timely fashion. If the client and the authorized agent determine
29 that there is no basis for an appeal, that the appeal is frivolous, or
30 that the client is not interested in pursuing the appeal, the appeal
31 shall be withdrawn, as soon as possible, and prior to the scheduling
32 of a hearing if possible.

33

34 5. (New section) a. If an authorized agent believes that a
35 critical witness will not be available for a scheduled hearing and
36 requests a postponement in order to produce the witness, the
37 authorized agent shall, after consulting with the client, provide the
38 division with the name, address, and title of the witness, the reason
39 the witness is unable to attend, the general nature and importance of
40 the witness's testimony, and an explanation of why there is no other
41 witness able to provide the essential testimony that the critical
42 witness would provide. Upon request, the authorized agent shall
43 submit a written statement of its request and supporting
44 documentation or sworn affidavit to the division.

45 b. If a postponement request is denied, the authorized agent
46 shall notify the client that the hearing will go forward as scheduled
47 and advise the client to appear. In the event that a postponement
48 request made pursuant to subsection a. of this section is denied, the

1 client shall be advised to appear with or without the critical witness
2 or another witness, and that it may renew the postponement request
3 at the hearing by requesting a continuance of the hearing.

4 c. In the event that the client or agent does not appear at a
5 scheduled hearing without requesting a postponement, or that a
6 postponement request is made but properly denied and the agent or
7 the client does not appear, no further hearings will be scheduled at
8 the request of the client or agent.

9
10 6. (New section) a. An authorized agent shall provide
11 competent representation to each party that is a client of the agent.
12 The authorized agent shall explain the proceedings and prepare the
13 case with the client and any witnesses before any division hearing is
14 called, shall be acquainted with the facts and legal issues involved,
15 and shall arrange for producing witnesses and documentary
16 evidence at the hearing.

17 b. An authorized agent shall make a reasonable effort to have
18 testimony given by first-hand witnesses in the case.

19 c. An authorized agent seeking to inspect or review a case file
20 may do so prior to the date of the hearing. If it is necessary for the
21 authorized agent to review the file on the day of the hearing, the
22 authorized agent shall make arrangements with the division in
23 advance of the scheduled hearing time.

24 d. An authorized agent shall not delay the hearing or disturb
25 the progress of other cases or the functioning of the division in an
26 effort to view a case file or consult with its client or witnesses.

27
28 7. (New section) An authorized agent shall be prepared to
29 produce all necessary evidence and witnesses at the time the
30 hearing is scheduled to commence and provide, prior to the date of
31 the hearing, to all parties copies of any documentary evidence to be
32 admitted into the record. An authorized agent shall not:

33 a. Engage in, or counsel or assist any party that is a client to
34 engage in, conduct which the authorized agent knows or should
35 know to be criminal, in violation of the provisions of sections 3
36 through 9 of this act or other provisions of this chapter (R.S.43:21-1
37 et seq.), or is prejudicial to, or unnecessarily delays, the efficient
38 administration of this chapter (R.S.43:21-1 et seq.), including any
39 failure to be, without good cause, available and properly prepared to
40 participate in appeals, hearings and other procedures at the
41 scheduled times;

42 b. Engage in, or counsel or assist any party that is a client to
43 engage in, conduct involving dishonesty, fraud, deceit,
44 misrepresentation, or the withholding of material facts.

45 c. Unlawfully obstruct another party's access to evidence or
46 destroy or conceal evidence; assert personal knowledge of the facts
47 unless testifying as a witness;

1 d. Refer at a hearing to a matter which the authorized agent
2 does not reasonably believe is relevant or is not supported by
3 evidence;

4 e. Seek to improperly influence any representative of the
5 division; or

6 f. Engage in any ex parte communication with any
7 representative of the division concerning the merits of any pending
8 appeal unless all other parties have waived their right to participate.

9
10 8. (New section) a. If the commissioner determines that an
11 authorized agent has exhibited a pattern of repeated violations of
12 the provisions of sections 3 through 9 of this act or other provisions
13 of this chapter (R.S.43:21-1 et seq.), including any violations of the
14 provisions of R.S.43:21-16 which apply to the agents of employing
15 units, the commissioner shall, in addition to any other actions taken
16 in the enforcement of this chapter, notify the authorized agent of
17 this finding and that the commissioner will monitor the authorized
18 agent to ascertain whether the violations continue after the
19 notification.

20 b. If, at the conclusion of a monitoring period of not more than
21 12 months after the first determination, the commissioner
22 determines that the agent has continued the pattern of repeated
23 violations of the provisions, the commissioner:

24 (1) May, after affording the authorized agent notice and an
25 opportunity for a hearing in accordance with the provisions of the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.), suspend the registration of the authorized agent, for a period
28 of time determined by the commissioner. In determining the length
29 of a suspension, the commissioner shall distinguish between serious
30 violations which potentially undermine the integrity of the benefit
31 determination and appeals processes and lesser violations, and shall
32 consider any of the following factors which are relevant: whether
33 the violations represent a continuation of the violations identified in
34 the previous determination, the gravity and duration of the
35 violations, the amount of harm resulting from the violations, the
36 experience of the authorized agent, the authorized agent's history of
37 previous violations or complaints filed of a similar or different
38 nature, the number of violations identified, and the existence of
39 mitigating circumstances, whether the authorized agent made good
40 faith efforts to comply with any applicable requirements, and any
41 other factors the commissioner considers relevant.

42 (2) Shall continue to monitor the conduct of the authorized
43 agent for a period of not more than 12 months after the
44 determination made pursuant to this subsection b.

45 c. If, in the subsequent monitoring of the conduct of the
46 authorized agent pursuant to subsection b. of this section, the
47 commissioner determines that the authorized agent has continued
48 the pattern of repeated violations, the commissioner, after affording

1 the authorized agent notice and an opportunity for a hearing in
2 accordance with the provisions of the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall revoke the
4 registration of the authorized agent.

5 An authorized agent representing an employer shall be regarded
6 as an agent of an employing unit for the purposes of R.S.43:21-16
7 and be subject to, in addition to the provisions of this section, all
8 requirements and penalties imposed pursuant to that section for a
9 agent of an employing unit.

10 Any individual, organization or business which, after notification
11 of the registration requirements of sections 3 through 9 of this act,
12 operates, or attempts to operate, as an authorized agent without the
13 required registration, shall be liable to a fine of \$1,000 for each
14 violation, to be recovered in an action at law in the name of the
15 division, and shall not be permitted by the division to represent any
16 party in connection with any communication with, or preceding of,
17 the division.

18

19 9. (New section) For the purposes of sections 3 through 9 of
20 this act:

21 "Authorized agent" means an individual, organization or
22 business that, for a fee, provides representation to parties in
23 communications with, or hearings or other proceedings before,
24 representatives of the division in connection with claims for
25 unemployment benefits, charges or tax assessments. In the case of
26 an individual authorized agent representing an organization or
27 business that provides representation to parties for a fee, both the
28 individual and the organization or business shall register with the
29 division and both will be held responsible as the authorized agents.
30 An attorney is not an authorized agent for purposes of this section
31 and is not required to register. If an attorney is employed by, or
32 otherwise provides service to, an organization or business which is
33 an authorized agent, the organization or business shall register with
34 the division and will be considered the authorized agent for
35 purposes of this section. An authorized agent representing an
36 employer shall be regarded as an agent of an employing unit for the
37 purposes of R.S.43:21-16 and be subject to all requirements and
38 penalties imposed by that section for an agent of an employing unit.

39 "Party" means any of the following parties to an appeal, hearing
40 or other procedure of the division: the division; a claimant for
41 unemployment compensation; or any employer against whom
42 charges may be made or tax liability may be assessed due to the
43 claim for unemployment compensation.

44 "Representative of the division" means any individual or entity,
45 including any deputy, appeal tribunal, the board of review or any
46 other individual or entity which represents the Division of
47 Unemployment and Temporary Disability Insurance of the
48 Department of Labor and Workforce Development in connection

1 with claims, benefits, charges or taxes for unemployment
2 compensation.

3

4 10. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill is designed to address certain abuses occurring in the
10 unemployment insurance (UI) system which often result in the
11 improper delaying or denial of UI benefits to laid off workers. By
12 providing incentives for the expeditious handling of UI claims the
13 bill will increase the efficiency of the UI system, to the benefit of
14 laid off workers and employers alike.

15 The bill provides for:

16 1. Waivers from repayment of claim overpayments for faultless
17 claimants, including cases in which employers or their authorized
18 agents fail to submit information required under the UI law and then
19 appeal only after a benefit determination is made, some times
20 delaying action for a full year or more after benefit payments
21 commence. The waiver provided by the bill from the repayment of
22 overpayments made to a faultless claimant would only apply to the
23 overpayments which occur before it has been determined that there
24 is an overpayment. The benefit level would, as under current law,
25 be reduced for all benefits paid after the determination of
26 overpayment.

27 2. An increase, to 20 days, of the amount of time for both
28 employers and claimants to appeal determinations.

29 3. Registration and regulation of authorized agents, including
30 agents representing employers, in UI claims.

31 The bill provides that failure of an authorized agent to correct
32 repeated violations of the requirements of the bill and the current UI
33 law after notification of the violations may lead to suspension and,
34 if continued, will lead to revocation of the registration.

SENATE LABOR COMMITTEE

STATEMENT TO `

SENATE, No. 1968

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 27, 2010

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 1968.

This bill, as amended by the committee, is designed to address certain abuses occurring in the unemployment insurance (UI) system which often result in the improper delaying or denial of UI benefits to laid off workers. By providing incentives for the expeditious handling of UI claims, the bill will increase the efficiency of the UI system, to the benefit of laid off workers and employers alike.

The bill provides for:

1. Waivers from repayment of claim overpayments for faultless claimants, including cases in which employers or their authorized agents fail to submit information required under the UI law and then appeal only after a benefit determination is made, some times delaying action for a full year or more after benefit payments commence. The waiver provided by the bill from the repayment of overpayments made to a faultless claimant would only apply to the overpayments which occur before it has been determined that there is an overpayment. The benefit level would, as under current law, be reduced for all benefits paid after the determination of overpayment.

2. An increase, to 20 days, of the amount of time for both employers and claimants to appeal determinations.

3. Registration and regulation of authorized agents, including agents representing employers, in UI claims.

The bill provides that failure of an authorized agent to correct repeated violations of the requirements of the bill and the current UI law after notification of the violations may lead to suspension and, if continued, will lead to revocation of the registration.

The amendments adopted by the committee:

1. Change the date from which authorized agents are required to register from June 30, 2011 to December 1, 2010; and

2. Clarify that an appeal of a determination may be made within 20 days after the date of the delivery of the notification of the initial determination or 20 days after the notice is mailed.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1968

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2010

The Assembly Labor Committee reports favorably and with committee amendments Senate Bill No. 1968 (1R).

This bill, as amended, is designed to address certain abuses occurring in the unemployment insurance (UI) system which often result in the improper delay or denial of UI benefits to laid off workers. By providing incentives for the expeditious handling of UI claims, the bill will increase the efficiency of the UI system, to the benefit of laid off workers and employers alike.

The bill provides for:

1. Waivers from repayment of claim overpayments for faultless claimants, including cases in which employers or their authorized agents fail to submit information required under the UI law and then appeal only after a benefit determination is made, sometimes delaying action for a full year or more after benefit payments commence. The waiver from the repayment of overpayments made to a faultless claimant provided by the bill would only apply to the overpayments which occur before it has been determined that there is an overpayment. The benefit level would, as under current law, be reduced for all benefits paid after the determination of overpayment.

2. An increase, to 20 days, of the amount of time for both employers and claimants to appeal any determination, other than an initial determination, made after December 1, 2010.

3. Registration and regulation of authorized agents, including agents representing employers, in UI claims.

The bill provides that failure of an authorized agent to correct repeated violations of the requirements of the bill and the current UI law after notification of the violations may lead to suspension and, if continued, shall lead to revocation of the registration.

Finally, the bill requires authorized agents to register after December 1, 2010; and clarifies that after December 1, 2010 an appeal of a benefit determination, other than an initial determination, may be made within 20 days after the date of the delivery of the notification of the initial determination or 20 days after the notice is mailed.

COMMITTEE AMENDMENTS

The committee amended the bill to:

1. Reduce the amount of time in which an initial determination may be appealed, for any initial determination made after December, 1, 2010, from 20 days to 7 days after delivery of the notification or 10 days after the notice is mailed;
2. Provide that an employer's UI account will not be charged for the amount of an overpayment of benefits if the overpayment is caused by an error of the department and not by any error of the employer;
3. Authorize the department to set by regulation a schedule of fees for the registration of agents as required by the bill, not to exceed the amount determined by the department to be necessary for the implementation of the act; and
4. Provide that an authorized client or agent may be entitled to re-schedule a hearing at which a client or agent failed to appear, if it can be demonstrated to the satisfaction of a representative of the department that the failure to appear was due to circumstances beyond the control of the client or agent.

These amendments make this bill identical to A-2864(1R), as reported by the committee today.

ASSEMBLY, No. 2864

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 14, 2010

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Revises certain unemployment benefit claim procedures and requires registration of authorized agents of parties to the procedures.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unemployment compensation and amending
2 and supplementing chapter 21 of Title 43 of the Revised Statutes.

3

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

6

7 1. R.S.43:21-6 is amended to read as follows:

8 43:21-6 (a) Filing. Claims for benefits shall be made in
9 accordance with such regulations as the Director of the Division of
10 Unemployment and Temporary Disability Insurance of the
11 Department of Labor and Workforce Development of the State of
12 New Jersey may approve. Each employer shall post and maintain
13 on his premises printed notices of his subject status, of such design,
14 in such numbers and at such places as the director of the division
15 may determine to be necessary to give notice thereof to persons in
16 the employer's service. Each employer shall give to each individual
17 at the time he becomes unemployed a printed copy of benefit
18 instructions. Both the aforesaid notices and instructions shall be
19 supplied by the division to employers without cost to them.

20 (b) (1) Procedure for making initial determinations with respect
21 to benefit years commencing on or after January 1, 1953.

22 A representative or representatives designated by the director of
23 the division and hereafter referred to as a "deputy" shall promptly
24 examine the claim, and shall notify the most recent employing unit
25 and, successively as necessary, each employer in inverse
26 chronological order during the base year. Such notification shall
27 require said employing unit and employer to furnish such
28 information to the deputy as may be necessary to determine the
29 claimant's eligibility and his benefit rights with respect to the
30 employer in question.

31 In his discretion, the director may appoint special deputies to
32 make initial or subsequent determinations under **[subsections 4(f)**
33 **and 5(d) of this chapter]** subsection (f) of R.S.43:21-4 and
34 subsection (d) of R.S.43-21-5.

35 If any employer or employing unit fails to respond to the request
36 for information within 10 days after the mailing, or communicating
37 by electronic means, of such request, the deputy shall rely entirely
38 on information from other sources, including an affidavit to the best
39 of the knowledge and belief of the claimant with respect to his
40 wages and time worked. Except in the event of fraud, if it is
41 determined that any information in such affidavit is erroneous, no
42 penalty, or refund liability for resulting benefit overpayments prior
43 to the receipt of the employer's reply, shall be imposed on the
44 claimant.

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 The deputy shall promptly make an initial determination based
2 upon the available information. The initial determination shall
3 show the weekly benefit amount payable, the maximum duration of
4 benefits with respect to the employer to whom the determination
5 relates, and the ratio of benefits chargeable to the employer's
6 account for benefit years commencing on or after July 1, 1986, and
7 also shall show whether the claimant is ineligible or disqualified for
8 benefits under the initial determination. The claimant and the
9 employer whose account may be charged for benefits payable
10 pursuant to said determination shall be promptly notified thereof.

11 Whenever an initial determination is based upon information
12 other than that supplied by an employer because such employer
13 failed to respond to the deputy's request for information, such initial
14 determination and any subsequent determination thereunder shall be
15 incontestable by the noncomplying employer, as to any charges to
16 his employer's account because of benefits paid prior to the close of
17 the calendar week following the receipt of his reply. Such initial
18 determination shall be altered if necessary upon receipt of
19 information from the employer, and any benefits paid or payable
20 with respect to weeks occurring subsequent to the close of the
21 calendar week following the receipt of the employer's reply shall be
22 paid in accordance with such altered initial determination.

23 The deputy shall issue a separate initial benefit determination
24 with respect to each of the claimant's base year employers, starting
25 with the most recent employer and continuing as necessary in the
26 inverse chronological order of the claimant's last date of
27 employment with each such employer. If an appeal is taken from
28 an initial determination, as hereinafter provided, by any employer
29 other than the first chargeable base year employer or for benefit
30 years commencing on or after July 1, 1986, that employer from
31 whom the individual was most recently separated, then such appeal
32 shall be limited in scope to include only one or more of the
33 following matters:

34 (A) The correctness of the benefit payments authorized to be
35 made under the determination;

36 (B) Fraud in connection with the claim pursuant to which the
37 initial determination is issued; or

38 (C) The refusal of suitable work offered by the chargeable
39 employer filing the appeal;

40 (D) Gross misconduct as provided in subsection (b) of
41 R.S.43:21-5.

42 The amount of benefits payable under an initial determination
43 may be reduced or canceled if necessary to avoid payment of
44 benefits for a number of weeks in excess of the maximum specified
45 in subsection (d) of [section] R.S.43:21-3 [of this Title].

46 Unless the claimant or any interested party, within [seven] 20
47 calendar days after delivery of notification of an initial
48 determination or [within 10 calendar days] within 20 calendar days

1 after such notification was mailed to his or their last-known address
2 and addresses, files an appeal from such decision, such decision
3 shall be final and benefits shall be paid or denied in accordance
4 therewith, except for such determinations as may be altered in
5 benefit amounts or duration as provided in this paragraph. Benefits
6 payable for periods pending an appeal and not in dispute shall be
7 paid as such benefits accrue; provided that insofar as any such
8 appeal is or may be an appeal from a determination to the effect that
9 the claimant is disqualified under the provisions of R.S.43:21-5 or
10 any amendments thereof or supplements thereto, benefits pending
11 determination of the appeal shall be withheld only for the period of
12 disqualification as provided for in said section, and notwithstanding
13 such appeal, the benefits otherwise provided by this act shall be
14 paid for the period subsequent to such period of disqualification;
15 and provided, also, that if there are two determinations of
16 entitlement, benefits for the period covered by such determinations
17 shall be paid regardless of any appeal which may thereafter be
18 taken, but no employer's account shall be charged with benefits so
19 paid, if the decision is finally reversed.

20 (2) Procedure for making initial determinations in certain cases
21 of concurrent employment, with respect to benefit years
22 commencing on or after January 1, 1953 and prior to benefit years
23 commencing on or after July 1, 1986.

24 Notwithstanding any other provisions of this Title, if an
25 individual shows to the satisfaction of the deputy that there were at
26 least 13 weeks in his base period in each of which he earned wages
27 from two or more employers totaling \$30.00 or more but in each of
28 which there was no single employer from whom he earned as much
29 as \$100.00, then such individual's claim shall be determined in
30 accordance with the special provisions of this paragraph. In such
31 case, the deputy shall determine the individual's eligibility for
32 benefits, his average weekly wage, weekly benefit rate and
33 maximum total benefits as if all his base year employers were a
34 single employer. Such determination shall apportion the liability
35 for benefit charges thereunder to the individual's several base year
36 employers so that each employer's maximum liability for charges
37 thereunder bears approximately the same relation to the maximum
38 total benefits allowed as the wages earned by the individual from
39 each employer during the base year bears to his total wages earned
40 from all employers during the base year. Such initial determination
41 shall also specify the individual's last date of employment within
42 the base year with respect to each base year employer, and such
43 employers shall be charged for benefits paid under said initial
44 determination in the inverse chronological order of such last date of
45 employment.

46 (3) Procedure for making subsequent determinations with
47 respect to benefit years commencing on or after January 1, 1953.
48 The deputy shall make determinations with respect to claims for

1 benefits thereafter in the course of the benefit year, in accordance
2 with any initial determination allowing benefits, and under which
3 benefits have not been exhausted, and each notification of a benefit
4 payment shall be a notification of an affirmative subsequent
5 determination. The allowance of benefits by the deputy on any such
6 determination, or the denial of benefits by the deputy on any such
7 determination, shall be appealable in the same manner and under
8 the same limitations as is provided in the case of initial
9 determinations.

10 (c) Appeals. Unless such appeal is withdrawn, an appeal
11 tribunal, after affording the parties reasonable opportunity for fair
12 hearing, shall affirm or modify the findings of fact and the
13 determination. The parties shall be duly notified of such tribunal's
14 decision, together with its reasons therefor, which shall be deemed
15 to be the final decision of the board of review, unless within **[10]**
16 20 days after the date of notification or mailing of such decision,
17 further appeal is initiated pursuant to subsection (e) of this section.

18 (d) Appeal tribunals. To hear and decide disputed benefit
19 claims, including appeals from determinations with respect to
20 demands for refunds of benefits under **[section 43:21-16(d) of this**
21 **chapter (R.S.43:21-1 et seq.)]** subsection d. of R.S.43:21-16, the
22 director with the approval of the Commissioner of Labor and
23 Workforce Development shall establish impartial appeal tribunals
24 consisting of a salaried body of examiners under the supervision of
25 a Chief Appeals Examiner, all of whom shall be appointed pursuant
26 to the provisions of Title **[11]** 11A of the **[Revised]** New Jersey
27 Statutes, Civil Service and other applicable statutes.

28 (e) Board of review. The board of review may on its own
29 motion affirm, modify, or set aside any decision of an appeal
30 tribunal on the basis of the evidence previously submitted in such
31 case, or direct the taking of additional evidence, or may permit any
32 of the parties to such decision to initiate further appeals before it.
33 The board of review shall permit such further appeal by any of the
34 parties interested in a decision of an appeal tribunal which is not
35 unanimous and from any determination which has been overruled or
36 modified by any appeal tribunal. The board of review may remove
37 to itself or transfer to another appeal tribunal the proceedings on
38 any claim pending before an appeal tribunal. Any proceedings so
39 removed to the board of review shall be heard by a quorum thereof
40 in accordance with the requirements of subsection (c) of this
41 section. The board of review shall promptly notify the interested
42 parties of its findings and decision.

43 (f) Procedure. The manner in which disputed benefit claims,
44 and appeals from determinations with respect to (1) claims for
45 benefits and (2) demands for refunds of benefits under **[section**
46 **43:21-16(d) of this chapter (R.S.43:21-1 et seq.)]** subsection (d) of
47 R.S.43:21-16 shall be presented, the reports thereon required from

1 the claimant and from employers, and the conduct of hearings and
2 appeals shall be in accordance with rules prescribed by the board of
3 review for determining the rights of the parties, whether or not such
4 rules conform to common law or statutory rules of evidence and
5 other technical rules of procedure. A full and complete record shall
6 be kept of all proceedings in connection with a disputed claim. All
7 testimony at any hearing upon a disputed claim shall be recorded,
8 but need not be transcribed unless the disputed claim is further
9 appealed.

10 (g) Witness fees. Witnesses subpoenaed pursuant to this section
11 shall be allowed fees at a rate fixed by the director. Such fees and
12 all expenses of proceedings involving disputed claims shall be
13 deemed a part of the expense of administering this chapter
14 (R.S.43:21-1 et seq.).

15 (h) Court review. Any decision of the board of review shall
16 become final as to any party upon the mailing of a copy thereof to
17 such party or to his attorney, or upon the mailing of a copy thereof
18 to such party at his last-known address. The Division of
19 Unemployment and Temporary Disability Insurance and any party
20 to a proceeding before the board of review may secure judicial
21 review of the final decision of the board of review. Any party not
22 joining in the appeal shall be made a defendant; the board of review
23 shall be deemed to be a party to any judicial action involving the
24 review of, or appeal from, any of its decisions, and may be
25 represented in any such judicial action by any qualified attorney,
26 who may be a regular salaried employee of the board of review or
27 has been designated by it for that purpose, or, at the board of
28 review's request, by the Attorney General.

29 (i) Failure to give notice. The failure of any public officer or
30 employee at any time heretofore or hereafter to give notice of
31 determination or decision required in subsections (b), (c) and (e) of
32 this section, as originally passed or amended, shall not relieve any
33 employer's account of any charge by reason of any benefits paid,
34 unless and until that employer can show to the satisfaction of the
35 director of the division that the said benefits, in whole or in part,
36 would not have been charged or chargeable to his account had such
37 notice been given. Any determination hereunder by the director
38 shall be subject to court review.

39 (cf: P.L.1984, c.24, s.4)

40

41 2. R.S.43:21-16 is amended to read as follows:

42 43:21-16. (a) Whoever makes a false statement or
43 representation, knowing it to be false, or knowingly fails to disclose
44 a material fact, to obtain or increase or attempts to obtain or
45 increase any benefit or other payment under this chapter
46 (R.S.43:21-1 et seq.), or under an employment security law of any
47 other state or of the federal government, either for himself or for
48 any other person, shall be liable to a fine of \$20.00 for each offense,

1 or 25% of the amount fraudulently obtained, whichever is greater,
2 to be recovered in an action at law in the name of the Division of
3 Unemployment and Temporary Disability Insurance of the
4 Department of Labor and Workforce Development of the State of
5 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
6 fine when recovered to be paid to the unemployment compensation
7 auxiliary fund for the use of said fund; and each such false
8 statement or representation or failure to disclose a material fact
9 shall constitute a separate offense. Any penalties imposed by this
10 subsection shall be in addition to those otherwise prescribed in this
11 chapter (R.S.43:21-1 et seq.).

12 (b) (1) An employing unit or any officer or agent of an
13 employing unit or any other person who makes a false statement or
14 representation, knowing it to be false, or who knowingly fails to
15 disclose a material fact, to prevent or reduce the payment of
16 benefits to any individual entitled thereto or to avoid becoming or
17 remaining subject hereto or to avoid or reduce any contribution or
18 other payment required from an employing unit under this chapter
19 (R.S.43:21-1 et seq.), or under an employment security law of any
20 other state or of the federal government, or who willfully fails or
21 refuses to furnish any reports required hereunder (except for such
22 reports as may be required under subsection (b) of R.S.43:21-6) or
23 to produce or permit the inspection or copying of records, as
24 required hereunder, shall be liable to a fine of \$100.00, or 25% of
25 the amount fraudulently withheld, whichever is greater, to be
26 recovered in an action at law in the name of the Division of
27 Unemployment and Temporary Disability Insurance of the
28 Department of Labor and Workforce Development of the State of
29 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
30 fine when recovered to be paid to the unemployment compensation
31 auxiliary fund for the use of said fund; and each such false
32 statement or representation or failure to disclose a material fact, and
33 each day of such failure or refusal shall constitute a separate
34 offense. Any penalties imposed by this paragraph shall be in
35 addition to those otherwise prescribed in this chapter (R.S.43:21-1
36 et seq.).

37 (2) Any employing unit or any officer or agent of an employing
38 unit or any other person who fails to submit any report required
39 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
40 \$25.00 for the first report not submitted within 10 days after the
41 mailing of a request for such report, and an additional \$25.00
42 penalty may be assessed for the next 10-day period, which may
43 elapse after the end of the initial 10-day period and before the
44 report is filed; provided that when such report or reports are not
45 filed within the prescribed time but it is shown to the satisfaction of
46 the director that the failure was due to a reasonable cause, no such
47 penalty shall be imposed. Any penalties imposed by this paragraph
48 shall be recovered as provided in subsection (e) of R.S.43:21-14,

1 and when recovered shall be paid to the unemployment
2 compensation auxiliary fund for the use of said fund.

3 (3) Any employing unit, officer or agent of the employing unit,
4 or any other person, determined by the controller to have knowingly
5 violated, or attempted to violate, or advised another person to
6 violate the transfer of employment experience provisions found at
7 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
8 a lower rate of contributions by failing to disclose material
9 information, or by making a false statement, or by a
10 misrepresentation of fact, shall be subject to a fine of \$5,000 or
11 25% of the contributions under-reported or attempted to be under-
12 reported, whichever is greater, to be recovered as provided in
13 subsection (e) of R.S.43:21-14, and when recovered to be paid to
14 the unemployment compensation auxiliary fund for the use of said
15 fund. For the purposes of this subsection, “knowingly” means
16 having actual knowledge of, or acting with deliberate ignorance or
17 reckless disregard for the prohibition involved.

18 (c) Any person who shall willfully violate any provision of this
19 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,
20 the violation of which is made unlawful or the observance of which
21 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
22 for which a penalty is neither prescribed herein nor provided by any
23 other applicable statute, shall be liable to a fine of \$50.00, to be
24 recovered in an action at law in the name of the Division of
25 Unemployment and Temporary Disability Insurance of the
26 Department of Labor and Workforce Development of the State of
27 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
28 fine when recovered to be paid to the unemployment compensation
29 auxiliary fund for the use of said fund; and each day such violation
30 continues shall be deemed to be a separate offense.

31 (d) (1) When it is determined by a representative or
32 representatives designated by the Director of the Division of
33 Unemployment and Temporary Disability Insurance of the
34 Department of Labor and Workforce Development of the State of
35 New Jersey that any person, **【whether (i)】** by reason of the
36 fraudulent or knowing nondisclosure or misrepresentation by him or
37 by another of a material fact **【(whether or not such nondisclosure or**
38 **misrepresentation was known or fraudulent), or (ii) for any other**
39 **reason】**, has received any sum as benefits under this chapter
40 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits
41 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in
42 his case, or while he was disqualified from receiving benefits, or
43 while otherwise not entitled to receive such sum as benefits, such
44 person, unless the director (with the concurrence of the controller)
45 directs otherwise by regulation, shall be liable to repay those
46 benefits in full. If the representative finds that the person received
47 an overpayment of benefits for any reason other than fraudulent or
48 knowing nondisclosure or misrepresentation or because the person

1 has been found, after a prior determination, to have become
2 ineligible for part or all of the benefits, the person shall not be
3 liable for any overpayment which occurred before the finding of the
4 overpayment. The sum shall be deducted from any future benefits
5 payable to the individual under this chapter (R.S.43:21-1 et seq.) or
6 shall be paid by the individual to the division for the unemployment
7 compensation fund, and such sum shall be collectible in the manner
8 provided for by law, including, but not limited to, the filing of a
9 certificate of debt with the Clerk of the Superior Court of New
10 Jersey; provided, however, that, except in the event of fraud, no
11 person shall be liable for any such refunds or deductions against
12 future benefits unless so notified before four years have elapsed
13 from the time the benefits in question were paid. Such person shall
14 be promptly notified of the determination and the reasons therefor.
15 Unless such person, within **[seven]** 20 calendar days after the
16 delivery of such determination, or within **[10]** 20 calendar days
17 after such notification was mailed to his last-known address, files
18 an appeal from such determination, such determination shall be
19 final.

20 (2) Interstate and cross-offset of state and federal unemployment
21 benefits. To the extent permissible under the laws and Constitution
22 of the United States, the commissioner is authorized to enter into or
23 cooperate in arrangements or reciprocal agreements with
24 appropriate and duly authorized agencies of other states or the
25 United States Secretary of Labor, or both, whereby:

26 (A) Overpayments of unemployment benefits as determined
27 under subsection (d) of R.S.43:21-16 shall be recovered by offset
28 from unemployment benefits otherwise payable under the
29 unemployment compensation law of another state, and
30 overpayments of unemployment benefits as determined under the
31 unemployment compensation law of another state shall be
32 recovered by offset from unemployment benefits otherwise payable
33 under R.S.43:21-1 et seq.; and

34 (B) Overpayments of unemployment benefits as determined
35 under applicable federal law, with respect to benefits or allowances
36 for unemployment provided under a federal program administered
37 by this State under an agreement with the United States Secretary of
38 Labor, shall be recovered by offset from unemployment benefits
39 otherwise payable under R.S.43:21-1 et seq., or any federal program
40 administered by this State, or under the unemployment
41 compensation law of another state or any federal unemployment
42 benefit or allowance program administered by another state under
43 an agreement with the United States Secretary of Labor, if the other
44 state has in effect a reciprocal agreement with the United States
45 Secretary of Labor as authorized by subsection (g) of 42
46 U.S.C.s.503, and if the United States agrees, as provided in the
47 reciprocal agreement with this State entered into under subsection
48 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits

1 as determined under subsection (d) of R.S.43:21-16 and
2 overpayments as determined under the unemployment
3 compensation law of another state which has in effect a reciprocal
4 agreement with the United States Secretary of Labor as authorized
5 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset
6 from benefits or allowances otherwise payable under a federal
7 program administered by this State or another state under an
8 agreement with the United States Secretary of Labor.

9 (e) (1) Any employing unit, or any officer or agent of an
10 employing unit, which officer or agent is directly or indirectly
11 responsible for collecting, truthfully accounting for, remitting when
12 payable any contribution, or filing or causing to be filed any report
13 or statement required by this chapter, or employer, or person failing
14 to remit, when payable, any employer contributions, or worker
15 contributions (if withheld or deducted), or the amount of such
16 worker contributions (if not withheld or deducted), or filing or
17 causing to be filed with the controller or the Division of
18 Unemployment and Temporary Disability Insurance of the
19 Department of Labor and Workforce Development of the State of
20 New Jersey, any false or fraudulent report or statement, and any
21 person who aids or abets an employing unit, employer, or any
22 person in the preparation or filing of any false or fraudulent report
23 or statement with intent to defraud the State of New Jersey or an
24 employment security agency of any other state or of the federal
25 government, or with intent to evade the payment of any
26 contributions, interest or penalties, or any part thereof, which shall
27 be due under the provisions of this chapter (R.S.43:21-1 et seq.),
28 shall be liable for each offense upon conviction before any Superior
29 Court or municipal court, to a fine not to exceed \$1,000.00 or by
30 imprisonment for a term not to exceed 90 days, or both, at the
31 discretion of the court. The fine upon conviction shall be payable to
32 the unemployment compensation auxiliary fund. Any penalties
33 imposed by this subsection shall be in addition to those otherwise
34 prescribed in this chapter (R.S.43:21-1 et seq.).

35 (2) Any employing unit, officer or agent of the employing unit,
36 or any other person, who knowingly violates, or attempts to violate,
37 or advise another person to violate the transfer of employment
38 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
39 conviction before any Superior Court or municipal court, guilty of a
40 crime of the fourth degree. For the purposes of this subsection,
41 "knowingly" means having actual knowledge of, or acting with
42 deliberate ignorance or reckless disregard for the prohibition
43 involved.

44 (f) Any employing unit or any officer or agent of an employing
45 unit or any other person who aids and abets any person to obtain
46 any sum of benefits under this chapter to which he is not entitled, or
47 a larger amount as benefits than that to which he is justly entitled,
48 shall be liable for each offense upon conviction before any Superior

1 Court or municipal court, to a fine not to exceed \$1,000.00 or by
2 imprisonment for a term not to exceed 90 days, or both, at the
3 discretion of the court. The fine upon conviction shall be payable to
4 the unemployment compensation auxiliary fund. Any penalties
5 imposed by this subsection shall be in addition to those otherwise
6 prescribed in this chapter (R.S.43:21-1 et seq.).

7 (g) There shall be created in the Division of Unemployment and
8 Temporary Disability Insurance of the Department of Labor and
9 Workforce Development of the State of New Jersey an investigative
10 staff for the purpose of investigating violations referred to in this
11 section and enforcing the provisions thereof.

12 (h) An employing unit or any officer or agent of an employing
13 unit who makes a false statement or representation, knowing it to be
14 false, or who knowingly fails to disclose a material fact, to reduce
15 benefit charges to the employing unit pursuant to paragraph (1) of
16 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
17 be recovered in an action at law in the name of the Division of
18 Unemployment and Temporary Disability Insurance of the
19 Department of Labor and Workforce Development of the State of
20 New Jersey or as provided in subsection (e) of R.S.43:21-14. The
21 fine when recovered shall be paid to the unemployment
22 compensation auxiliary fund for the use of the fund. Each false
23 statement or representation or failure to disclose a material fact, and
24 each day of that failure or refusal shall constitute a separate offense.
25 Any penalties imposed by this subsection shall be in addition to
26 those otherwise prescribed in R.S.43:21-1 et seq.

27 (cf: P.L.2005, c.239, s.4)

28

29 3. (New section) a. An authorized agent who represents
30 parties for a fee shall not represent any party after December 1,
31 2010 in any procedure with the division regarding claims for
32 unemployment benefits or any obligations of employers regarding
33 charges or taxes for unemployment compensation, including any
34 filing of information, or any appeal, hearing, or other proceeding
35 regarding unemployment benefit claims, charges or taxes before
36 any representative of the division, unless the authorized agent is
37 registered with the division pursuant to this section.

38 b. Each authorized agent shall register with the division using
39 forms provided by the division. An applying authorized agent who
40 is an individual shall provide the individual's name, permanent
41 address and telephone number. An authorized agent which is an
42 organization or business shall provide the name, local address and
43 telephone numbers, and address and telephone number of the
44 principal place of business, if different, and the names of principals
45 or others authorized to act on behalf of the organization and to
46 receive notice. Any changes in identifying information shall be
47 promptly reported to the division.

1 c. Upon registration, an authorized agent shall be assigned a
2 registration number that shall be used in all communications with,
3 or appearances before, any representative of the division. An
4 individual communicating or appearing on behalf of an organization
5 or business providing representation for a fee to parties before any
6 representative of the division shall indicate the registration number
7 of the individual, unless that individual is an attorney, and the
8 registration number of the organization or business, and the division
9 shall not accept any representation of the party in a communication
10 with, or proceeding of, the division by an individual, organization
11 or business if the number or numbers are not provided. If an
12 attorney is employed by, or otherwise provides service to, an
13 organization or business which is an authorized agent, the
14 registration number of the organization or business shall be
15 provided.

16 d. Each registrant shall file notice with the division within
17 thirty days after the agent ceases activity as an authorized agent.

18

19 4. (New section) a. An authorized agent shall keep any party
20 that is a client of the agent reasonably informed about the status of
21 any matter before the division and verify with the client the
22 accuracy of any information it provides to the division.

23 b. An authorized agent shall promptly notify the client of any
24 scheduled proceedings before any representative of the division to
25 allow time for case preparation and the scheduling of witnesses.
26 Clients shall be apprised of the consequences of not appearing and
27 the importance of participation at all stages of the proceedings and
28 of producing first-hand testimony.

29 c. If a client determines that it does not wish to pursue an
30 appeal, a request for withdrawal of the appeal shall be made in
31 writing, or communicated orally and followed by a written request,
32 in a timely fashion. If the client and the authorized agent determine
33 that there is no basis for an appeal, that the appeal is frivolous, or
34 that the client is not interested in pursuing the appeal, the appeal
35 shall be withdrawn, as soon as possible, and prior to the scheduling
36 of a hearing if possible.

37

38 5. (New section) a. If an authorized agent believes that a
39 critical witness will not be available for a scheduled hearing and
40 requests a postponement in order to produce the witness, the
41 authorized agent shall, after consulting with the client, provide the
42 division with the name, address, and title of the witness, the reason
43 the witness is unable to attend, the general nature and importance of
44 the witness's testimony, and an explanation of why there is no other
45 witness able to provide the essential testimony that the critical
46 witness would provide. Upon request, the authorized agent shall
47 submit a written statement of its request and supporting
48 documentation or sworn affidavit to the division.

1 b. If a postponement request is denied, the authorized agent
2 shall notify the client that the hearing will go forward as scheduled
3 and advise the client to appear. In the event that a postponement
4 request made pursuant to subsection a. of this section is denied, the
5 client shall be advised to appear with or without the critical witness
6 or another witness, and that it may renew the postponement request
7 at the hearing by requesting a continuance of the hearing.

8 c. In the event that the client or agent does not appear at a
9 scheduled hearing without requesting a postponement, or that a
10 postponement request is made but properly denied and the agent or
11 the client does not appear, no further hearings will be scheduled at
12 the request of the client or agent.

13

14 6. (New section) a. An authorized agent shall provide
15 competent representation to each party that is a client of the agent.
16 The authorized agent shall explain the proceedings and prepare the
17 case with the client and any witnesses before any division hearing is
18 called, shall be acquainted with the facts and legal issues involved,
19 and shall arrange for producing witnesses and documentary
20 evidence at the hearing.

21 b. An authorized agent shall make a reasonable effort to have
22 testimony given by first-hand witnesses in the case.

23 c. An authorized agent seeking to inspect or review a case file
24 may do so prior to the date of the hearing. If it is necessary for the
25 authorized agent to review the file on the day of the hearing, the
26 authorized agent shall make arrangements with the division in
27 advance of the scheduled hearing time.

28 d. An authorized agent shall not delay the hearing or disturb
29 the progress of other cases or the functioning of the division in an
30 effort to view a case file or consult with its client or witnesses.

31

32 7. (New section) An authorized agent shall be prepared to
33 produce all necessary evidence and witnesses at the time the
34 hearing is scheduled to commence and provide, prior to the date of
35 the hearing, to all parties copies of any documentary evidence to be
36 admitted into the record. An authorized agent shall not:

37 a. Engage in, or counsel or assist any party that is a client to
38 engage in, conduct which the authorized agent knows or should
39 know to be criminal, in violation of the provisions of sections 3
40 through 9 of this act or other provisions of this chapter (R.S.43:21-1
41 et seq.), or is prejudicial to, or unnecessarily delays, the efficient
42 administration of this chapter (R.S.43:21-1 et seq.), including any
43 failure to be, without good cause, available and properly prepared to
44 participate in appeals, hearings and other procedures at the
45 scheduled times;

46 b. Engage in, or counsel or assist any party that is a client to
47 engage in, conduct involving dishonesty, fraud, deceit,
48 misrepresentation, or the withholding of material facts.

- 1 c. Unlawfully obstruct another party's access to evidence or
2 destroy or conceal evidence; assert personal knowledge of the facts
3 unless testifying as a witness;
- 4 d. Refer at a hearing to a matter which the authorized agent
5 does not reasonably believe is relevant or is not supported by
6 evidence;
- 7 e. Seek to improperly influence any representative of the
8 division; or
- 9 f. Engage in any ex parte communication with any
10 representative of the division concerning the merits of any pending
11 appeal unless all other parties have waived their right to participate.
12
- 13 8. (New section) a. If the commissioner determines that an
14 authorized agent has exhibited a pattern of repeated violations of
15 the provisions of sections 3 through 9 of this act or other provisions
16 of this chapter (R.S.43:21-1 et seq.), including any violations of the
17 provisions of R.S.43:21-16 which apply to the agents of employing
18 units, the commissioner shall, in addition to any other actions taken
19 in the enforcement of this chapter, notify the authorized agent of
20 this finding and that the commissioner will monitor the authorized
21 agent to ascertain whether the violations continue after the
22 notification.
- 23 b. If, at the conclusion of a monitoring period of not more than
24 12 months after the first determination, the commissioner
25 determines that the agent has continued the pattern of repeated
26 violations of the provisions, the commissioner:
- 27 (1) May, after affording the authorized agent notice and an
28 opportunity for a hearing in accordance with the provisions of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), suspend the registration of the authorized agent, for a period
31 of time determined by the commissioner. In determining the length
32 of a suspension, the commissioner shall distinguish between serious
33 violations which potentially undermine the integrity of the benefit
34 determination and appeals processes and lesser violations, and shall
35 consider any of the following factors which are relevant: whether
36 the violations represent a continuation of the violations identified in
37 the previous determination, the gravity and duration of the
38 violations, the amount of harm resulting from the violations, the
39 experience of the authorized agent, the authorized agent's history of
40 previous violations or complaints filed of a similar or different
41 nature, the number of violations identified, and the existence of
42 mitigating circumstances, whether the authorized agent made good
43 faith efforts to comply with any applicable requirements, and any
44 other factors the commissioner considers relevant.
- 45 (2) Shall continue to monitor the conduct of the authorized
46 agent for a period of not more than 12 months after the
47 determination made pursuant to this subsection b.

1 c. If, in the subsequent monitoring of the conduct of the
2 authorized agent pursuant to subsection b. of this section, the
3 commissioner determines that the authorized agent has continued
4 the pattern of repeated violations, the commissioner, after affording
5 the authorized agent notice and an opportunity for a hearing in
6 accordance with the provisions of the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall revoke the
8 registration of the authorized agent.

9 An authorized agent representing an employer shall be regarded
10 as an agent of an employing unit for the purposes of R.S.43:21-16
11 and be subject to, in addition to the provisions of this section, all
12 requirements and penalties imposed pursuant to that section for a
13 agent of an employing unit.

14 Any individual, organization or business which, after notification
15 of the registration requirements of sections 3 through 9 of this act,
16 operates, or attempts to operate, as an authorized agent without the
17 required registration, shall be liable to a fine of \$1,000 for each
18 violation, to be recovered in an action at law in the name of the
19 division, and shall not be permitted by the division to represent any
20 party in connection with any communication with, or preceding of,
21 the division.

22
23 9. (New section) For the purposes of sections 3 through 9 of
24 this act:

25 "Authorized agent" means an individual, organization or
26 business that, for a fee, provides representation to parties in
27 communications with, or hearings or other proceedings before,
28 representatives of the division in connection with claims for
29 unemployment benefits, charges or tax assessments. In the case of
30 an individual authorized agent representing an organization or
31 business that provides representation to parties for a fee, both the
32 individual and the organization or business shall register with the
33 division and both will be held responsible as the authorized agents.
34 An attorney is not an authorized agent for purposes of this section
35 and is not required to register. If an attorney is employed by, or
36 otherwise provides service to, an organization or business which is
37 an authorized agent, the organization or business shall register with
38 the division and will be considered the authorized agent for
39 purposes of this section. An authorized agent representing an
40 employer shall be regarded as an agent of an employing unit for the
41 purposes of R.S.43:21-16 and be subject to all requirements and
42 penalties imposed by that section for an agent of an employing unit.

43 "Party" means any of the following parties to an appeal, hearing
44 or other procedure of the division: the division; a claimant for
45 unemployment compensation; or any employer against whom
46 charges may be made or tax liability may be assessed due to the
47 claim for unemployment compensation.

1 “Representative of the division” means any individual or entity,
2 including any deputy, appeal tribunal, the board of review or any
3 other individual or entity which represents the Division of
4 Unemployment and Temporary Disability Insurance of the
5 Department of Labor and Workforce Development in connection
6 with claims, benefits, charges or taxes for unemployment
7 compensation.

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9 10. This act shall take effect immediately.

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STATEMENT

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14 This bill is designed to address certain abuses occurring in the
15 unemployment insurance (UI) system which often result in the
16 improper delaying or denial of UI benefits to laid off workers. By
17 providing incentives for the expeditious handling of UI claims the
18 bill will increase the efficiency of the UI system, to the benefit of
19 laid off workers and employers alike.

20 The bill provides for:

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1. Waivers from repayment of claim overpayments for faultless claimants, including cases in which employers or their authorized agents fail to submit information required under the UI law and then appeal only after a benefit determination is made, some times delaying action for a full year or more after benefit payments commence. The waiver provided by the bill from the repayment of overpayments made to a faultless claimant would only apply to the overpayments which occur before it has been determined that there is an overpayment. The benefit level would, as under current law, be reduced for all benefits paid after the determination of overpayment.

2. An increase, to 20 days, of the amount of time for both employers and claimants to appeal determinations.

3. Registration and regulation of authorized agents, including agents representing employers, in UI claims.

 The bill provides that failure of an authorized agent to correct repeated violations of the requirements of the bill and the current UI law after notification of the violations may lead to suspension and, if continued, will lead to revocation of the registration.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2864

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2010

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 2864.

This bill, as amended, is designed to address certain abuses occurring in the unemployment insurance (UI) system which often result in the improper delay or denial of UI benefits to laid off workers. By providing incentives for the expeditious handling of UI claims, the bill will increase the efficiency of the UI system, to the benefit of laid off workers and employers alike.

The bill provides for:

1. Waivers from repayment of claim overpayments for faultless claimants, including cases in which employers or their authorized agents fail to submit information required under the UI law and then appeal only after a benefit determination is made, sometimes delaying action for a full year or more after benefit payments commence. The waiver from the repayment of overpayments made to a faultless claimant provided by the bill would only apply to the overpayments which occur before it has been determined that there is an overpayment. The benefit level would, as under current law, be reduced for all benefits paid after the determination of overpayment.

2. An increase, to 20 days, of the amount of time for both employers and claimants to appeal any determination, other than an initial determination, made after December 1, 2010.

3. Registration and regulation of authorized agents, including agents representing employers, in UI claims.

The bill provides that failure of an authorized agent to correct repeated violations of the requirements of the bill and the current UI law after notification of the violations may lead to suspension and, if continued, shall lead to revocation of the registration.

Finally, the bill requires authorized agents to register after December 1, 2010; and clarifies that after December 1, 2010 an appeal of a benefit determination, other than an initial determination, may be made within 20 days after the date of the delivery of the notification of the initial determination or 20 days after the notice is mailed.

COMMITTEE AMENDMENTS

The committee amended the bill to:

1. Change the date, from June 30, 2010 to December 1, 2010, on which the bill's registration requirement for authorized agents goes into effect;
2. Reduce the amount of time in which an initial determination may be appealed, for any initial determination made after December, 1, 2010, from 20 days to 7 days after delivery of the notification or 10 days after the notice is mailed;
3. Provide that an employer's UI account will not be charged for the amount of an overpayment of benefits if the overpayment is caused by an error of the department and not by any error of the employer;
4. Authorize the department to set by regulation a schedule of fees for the registration of agents as required by the bill, not to exceed the amount determined by the department to be necessary for the implementation of the act; and
5. Provide that an authorized client or agent may be entitled to re-schedule a hearing at which a client or agent failed to appear, if it can be demonstrated to the satisfaction of a representative of the department that the failure to appear was due to circumstances beyond the control of the client or agent.

These amendments make this bill identical to S-1968(2R), as reported by the committee today.

SENATE BILL NO. 1968
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1968 (Second Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill seeks to prevent certain abuses in the unemployment insurance ("UI") system, such as the improper delay or denial of UI benefits to eligible claimants. The bill would increase the amount of time for a claimant or other interested party to appeal a benefit determination before the board of review, other than an initial determination, from 10 days to 20 days after the date of notification or mailing of such decision for any decision made after December 1, 2010. Moreover, the bill provides for the registration and regulation of authorized agents, including agents representing employers, in UI claims. The bill further provides that an individual who receives an overpayment of benefits for any reason other than fraudulent or knowing nondisclosure or misrepresentation or because the person has been found, after a prior determination, to have become ineligible for part or all of the benefits, is not liable for any overpayment that occurred before the finding of the overpayment.

B. Recommended Action

I agree that individuals who are eligible for UI benefits should be further protected from abuse and undue delay by increasing oversight on the authorized agents who provide representation to parties in connection with claims for unemployment benefits. I do not, however, support the provisions of this bill that would mandate the wholesale elimination of the discretion of the Department of Labor &

Workforce Development (the "Department") to determine whether to grant a claimant a waiver of recovery of an overpayment of benefits for certain non-fraudulent claims.

The fact that a claim is not fraudulent should not be the basis for automatically allowing claimants to retain funds they were not legally entitled to receive in the first place. Under current law, a claimant who receives an overpayment of benefits in error is liable for the amount of the overpayment subject to his or her right to present a hardship claim to the Department. I am not persuaded that there is a compelling reason to change this aspect of the law.

It would be imprudent to take away the Department's ability to determine whether a claim for repayment should be pursued or waived based on a finding that an economic or other hardship exists. This is particularly true given the financial condition of the unemployment insurance fund, which at present is approximately \$1.75 billion in debt. The Department estimates that this proposed change in the law would exempt approximately \$28 million annually from any evaluation by the State regarding whether these overpayments can or should be repaid by the individuals who received them in error. The State's policy should be to preserve funds for all eligible claimants by, in appropriate circumstances, seeking to recover funds for claims that were overpaid.

Further, state benefit recoupment provisions must be consistent with federal law. Federal law requires that a state recover improperly paid unemployment benefits. Limiting the State's recoupment of improperly paid unemployment benefits to cases solely involving the fraudulent receipt of benefits could result in a determination by the United States Secretary of Labor that the State is not in compliance with federal law and

the loss of federal funds to administer the State's unemployment insurance program.

I recognize that there will be times when a claimant will not be able to repay the overpayment of unemployment benefits due to a hardship -- economic or otherwise. These claimants are amply protected under existing regulations. The Director of the Division of Unemployment & Temporary Disability Insurance of the New Jersey Department of Labor & Workforce Development presently has discretion to determine whether to waive the recovery of an overpayment of benefits on a case-by-case basis. Under these regulations, upon the request of the claimant or the claimant's representative, the Director may waive recovery of an overpayment of benefits for non-fraudulent claims in circumstances where the claimant is deceased, where the claimant is disabled and no longer able to work, and in other compelling circumstances.

The current law strikes an appropriate balance between the State's interest in protecting the assets of the UI fund for all New Jersey citizens who qualify for such benefits and its interest in ensuring that a fair mechanism exists to protect individuals from harsh repayment obligations when facing a legitimate economic or other hardship. Therefore, I recommend deleting the provisions of the bill that would require the Department to permit individuals who received an overpayment of benefits for any reason other than for fraud to keep the payments automatically.

Accordingly, I herewith return Senate Bill No. 1968 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Lines 42-43: Delete ", or refund liability for resulting benefit overpayments prior to the receipt of the employer's reply,"

Page 8, Section 2, Line 39:

After "[whether (i)]" insert "whether (i)"

Page 8, Section 2, Line 40:

Delete "fraudulent or knowing"

Page 8, Section 2, Lines 41-43:

After "[whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason]" insert "(whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason"

Page 9, Section 2, Lines 2-8:

Delete "If the representative finds that the person received an overpayment of benefits for any reason other than fraudulent or knowing nondisclosure or misrepresentation or because the person has been found, after a prior determination, to have become ineligible for part or all of the benefits, the person shall not be liable for any overpayment which occurred before the finding of the overpayment."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor