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LAW/RWH

P.L.2013, CHAPTER 148, *approved August 19, 2013*
Senate, No. 2739 (*First Reprint*)

1 AN ACT concerning the charging of employer accounts for purposes
2 of unemployment compensation payments and amending
3 R.S.43:21-6.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

9 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
10 accordance with such regulations as the Director of the Division of
11 Unemployment and Temporary Disability Insurance of the
12 Department of Labor and Workforce Development of the State of
13 New Jersey may approve. Each employer shall post and maintain
14 on his premises printed notices of his subject status, of such design,
15 in such numbers and at such places as the director of the division
16 may determine to be necessary to give notice thereof to persons in
17 the employer's service. Each employer shall give to each individual
18 at the time he becomes unemployed, for any reason, whether the
19 unemployment is permanent or temporary, a printed copy of benefit
20 instructions. The benefit instructions given to the individual shall
21 include, but not be limited to, the following information: (A) the
22 date upon which the individual becomes unemployed, and, in the
23 case that the unemployment is temporary, to the extent possible, the
24 date upon which the individual is expected to be recalled to work;
25 and (B) that the individual may lose some or all of the benefits to
26 which he is entitled if he fails to file a claim in a timely manner.
27 Both the aforesaid notices and instructions, including information
28 detailing the time sensitivity of filing a claim, shall be supplied by
29 the division to employers without cost to them. Nothing in this
30 section shall be construed so as to require an employer to re-hire an
31 individual formerly in the employer's service.

32 (2) Any claimant, except for a claimant who has, for any period
33 during his base year, served in the military, worked for the federal
34 government, or worked outside the State of New Jersey, may
35 choose to certify, cancel or close his claim for unemployment
36 insurance benefits at any time, 24 hours a day and seven days a
37 week, via the Internet on a website developed by the division;
38 however, any claim that is certified, cancelled or closed after 7:00
39 PM will not be processed by the division until the next scheduled
40 posting date.

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 9, 2013.

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

3 A representative or representatives designated by the director of
4 the division and hereafter referred to as a "deputy" shall promptly
5 examine the claim, and shall notify the most recent employing unit
6 and, successively as necessary, each employer in inverse
7 chronological order during the base year. Such notification shall
8 require said employing unit and employer to furnish such
9 information to the deputy as may be necessary to determine the
10 claimant's eligibility and his benefit rights with respect to the
11 employer in question.

12 In his discretion, the director may appoint special deputies to
13 make initial or subsequent determinations under subsection (f) of
14 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

15 If any employer or employing unit fails to respond to the request
16 for information within 10 days after the mailing, or communicating
17 by electronic means, of such request, the deputy shall rely entirely
18 on information from other sources, including an affidavit to the best
19 of the knowledge and belief of the claimant with respect to his
20 wages and time worked. Except in the event of fraud, if it is
21 determined that any information in such affidavit is erroneous, no
22 penalty shall be imposed on the claimant.

23 The deputy shall promptly make an initial determination based
24 upon the available information. The initial determination shall
25 show the weekly benefit amount payable, the maximum duration of
26 benefits with respect to the employer to whom the determination
27 relates, and the ratio of benefits chargeable to the employer's
28 account for benefit years commencing on or after July 1, 1986, and
29 also shall show whether the claimant is ineligible or disqualified for
30 benefits under the initial determination. The claimant and the
31 employer whose account may be charged for benefits payable
32 pursuant to said determination shall be promptly notified thereof.

33 Whenever an initial determination is based upon information
34 other than that supplied by an employer because such employer
35 failed to respond to the deputy's request for information, such initial
36 determination and any subsequent determination thereunder shall be
37 incontestable by the noncomplying employer, as to any charges to
38 his employer's account because of benefits paid prior to the close of
39 the calendar week following the receipt of his reply. Such initial
40 determination shall be altered if necessary upon receipt of
41 information from the employer, and any benefits paid or payable
42 with respect to weeks occurring subsequent to the close of the
43 calendar week following the receipt of the employer's reply shall be
44 paid in accordance with such altered initial determination.

45 The deputy shall issue a separate initial benefit determination
46 with respect to each of the claimant's base year employers, starting
47 with the most recent employer and continuing as necessary in the
48 inverse chronological order of the claimant's last date of

1 employment with each such employer. If an appeal is taken from
2 an initial determination, as hereinafter provided, by any employer
3 other than the first chargeable base year employer or for benefit
4 years commencing on or after July 1, 1986, that employer from
5 whom the individual was most recently separated, then such appeal
6 shall be limited in scope to include only one or more of the
7 following matters:

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

10 (B) Fraud in connection with the claim pursuant to which the
11 initial determination is issued;

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

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

16 The amount of benefits payable under an initial determination
17 may be reduced or canceled if necessary to avoid payment of
18 benefits for a number of weeks in excess of the maximum specified
19 in subsection (d) of R.S.43:21-3.

20 Unless the claimant or any interested party, within seven
21 calendar days after delivery of notification of an initial
22 determination or within 10 calendar days after such notification was
23 mailed to his or their last-known address and addresses, files an
24 appeal from such decision, such decision shall be final and benefits
25 shall be paid or denied in accordance therewith, except for such
26 determinations as may be altered in benefit amounts or duration as
27 provided in this paragraph. Benefits payable for periods pending an
28 appeal and not in dispute shall be paid as such benefits accrue;
29 provided that insofar as any such appeal is or may be an appeal
30 from a determination to the effect that the claimant is disqualified
31 under the provisions of R.S.43:21-5 or any amendments thereof or
32 supplements thereto, benefits pending determination of the appeal
33 shall be withheld only for the period of disqualification as provided
34 for in said section, and notwithstanding such appeal, the benefits
35 otherwise provided by this act shall be paid for the period
36 subsequent to such period of disqualification; and provided, also,
37 that if there are two determinations of entitlement, benefits for the
38 period covered by such determinations shall be paid regardless of
39 any appeal which may thereafter be taken, but no employer's
40 account shall be charged with benefits so paid, if the decision is
41 finally reversed.

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

46 Notwithstanding any other provisions of this Title, if an
47 individual shows to the satisfaction of the deputy that there were at
48 least 13 weeks in his base period in each of which he earned wages

1 from two or more employers totaling \$30.00 or more but in each of
2 which there was no single employer from whom he earned as much
3 as \$100.00, then such individual's claim shall be determined in
4 accordance with the special provisions of this paragraph. In such
5 case, the deputy shall determine the individual's eligibility for
6 benefits, his average weekly wage, weekly benefit rate and
7 maximum total benefits as if all his base year employers were a
8 single employer. Such determination shall apportion the liability
9 for benefit charges thereunder to the individual's several base year
10 employers so that each employer's maximum liability for charges
11 thereunder bears approximately the same relation to the maximum
12 total benefits allowed as the wages earned by the individual from
13 each employer during the base year bears to his total wages earned
14 from all employers during the base year. Such initial determination
15 shall also specify the individual's last date of employment within
16 the base year with respect to each base year employer, and such
17 employers shall be charged for benefits paid under said initial
18 determination in the inverse chronological order of such last date of
19 employment.

20 (3) Procedure for making subsequent determinations with
21 respect to benefit years commencing on or after January 1, 1953.
22 The deputy shall make determinations with respect to claims for
23 benefits thereafter in the course of the benefit year, in accordance
24 with any initial determination allowing benefits, and under which
25 benefits have not been exhausted, and each notification of a benefit
26 payment shall be a notification of an affirmative subsequent
27 determination. The allowance of benefits by the deputy on any such
28 determination, or the denial of benefits by the deputy on any such
29 determination, shall be appealable in the same manner and under
30 the same limitations as is provided in the case of initial
31 determinations.

32 (c) Appeals. Unless such appeal is withdrawn, an appeal
33 tribunal, after affording the parties reasonable opportunity for fair
34 hearing, shall affirm or modify the findings of fact and the
35 determination. The parties shall be duly notified of such tribunal's
36 decision, together with its reasons therefor, which shall be deemed
37 to be the final decision of the board of review, unless further appeal
38 is initiated pursuant to subsection (e) of this section within 10 days
39 after the date of notification or mailing of the decision for any
40 decision made on or before December 1, 2010, or within 20 days
41 after the date of notification or mailing of such decision for any
42 decision made after December 1, 2010.

43 (d) Appeal tribunals. To hear and decide disputed benefit
44 claims, including appeals from determinations with respect to
45 demands for refunds of benefits under subsection (d) of R.S.43:21-
46 16, the director with the approval of the Commissioner of Labor and
47 Workforce Development shall establish impartial appeal tribunals
48 consisting of a salaried body of examiners under the supervision of

1 a Chief Appeals Examiner, all of whom shall be appointed pursuant
2 to the provisions of Title 11A of the New Jersey Statutes, Civil
3 Service and other applicable statutes.

4 (e) Board of review. The board of review may on its own
5 motion affirm, modify, or set aside any decision of an appeal
6 tribunal on the basis of the evidence previously submitted in such
7 case, or direct the taking of additional evidence, or may permit any
8 of the parties to such decision to initiate further appeals before it.
9 The board of review shall permit such further appeal by any of the
10 parties interested in a decision of an appeal tribunal which is not
11 unanimous and from any determination which has been overruled or
12 modified by any appeal tribunal. The board of review may remove
13 to itself or transfer to another appeal tribunal the proceedings on
14 any claim pending before an appeal tribunal. Any proceedings so
15 removed to the board of review shall be heard by a quorum thereof
16 in accordance with the requirements of subsection (c) of this
17 section. The board of review shall promptly notify the interested
18 parties of its findings and decision.

19 (f) Procedure. The manner in which disputed benefit claims,
20 and appeals from determinations with respect to (1) claims for
21 benefits and (2) demands for refunds of benefits under subsection
22 (d) of R.S.43:21-16 shall be presented, the reports thereon required
23 from the claimant and from employers, and the conduct of hearings
24 and appeals shall be in accordance with rules prescribed by the
25 board of review for determining the rights of the parties, whether or
26 not such rules conform to common law or statutory rules of
27 evidence and other technical rules of procedure. A full and
28 complete record shall be kept of all proceedings in connection with
29 a disputed claim. All testimony at any hearing upon a disputed
30 claim shall be recorded, but need not be transcribed unless the
31 disputed claim is further appealed.

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

37 (h) Court review. Any decision of the board of review shall
38 become final as to any party upon the mailing of a copy thereof to
39 such party or to his attorney, or upon the mailing of a copy thereof
40 to such party at his last-known address. The Division of
41 Unemployment and Temporary Disability Insurance and any party
42 to a proceeding before the board of review may secure judicial
43 review of the final decision of the board of review. Any party not
44 joining in the appeal shall be made a defendant; the board of review
45 shall be deemed to be a party to any judicial action involving the
46 review of, or appeal from, any of its decisions, and may be
47 represented in any such judicial action by any qualified attorney,
48 who may be a regular salaried employee of the board of review or

1 has been designated by it for that purpose, or, at the board of
2 review's request, by the Attorney General.

3 (i) Failure to give notice. The failure of any public officer or
4 employee at any time heretofore or hereafter to give notice of
5 determination or decision required in subsections (b), (c) and (e) of
6 this section, as originally passed or amended, shall not relieve any
7 employer's account of any charge by reason of any benefits paid,
8 unless and until that employer can show to the satisfaction of the
9 director of the division that the said benefits, in whole or in part,
10 would not have been charged or chargeable to his account had such
11 notice been given. Any determination hereunder by the director
12 shall be subject to court review.

13 (j) With respect to benefit payments made on or after October
14 22, 2013, an employer's account shall not be relieved of charges
15 related to a benefit payment that was made erroneously from the
16 division if it is determined that:

17 (1) The erroneous benefit payment was made because the
18 employer, or an agent of the employer, failed to respond in a timely
19 or adequate manner to a request from the division for information
20 related to the claim for benefits; and

21 (2) The employer, or an agent of the employer, has established a
22 pattern of failing to respond in a timely or adequate manner to ¹[a
23 request] requests¹ from the division for information related to ¹[a
24 claim] claims¹ for benefits.

25 Determinations of the division prohibiting the relief of charges
26 pursuant to this subsection shall be subject to appeal in the same
27 manner as other determinations of the division related to the
28 charging of employer accounts.

29 For purposes of subsection (j) of this section:

30 "Erroneous benefit payment" means a benefit payment that,
31 except for the failure by the employer, or an agent of the employer,
32 to respond in a timely or adequate manner to a request from the
33 division for information with respect to the claim for benefits,
34 would not have been made; and

35 "Pattern of failing" means repeated documented failure on the
36 part of the employer, or an agent of the employer, to respond to
37 requests from the division ¹to the employer or employer's agent¹
38 for information related to a claim for benefits, except that an
39 employer, or an agent of an employer, shall not be determined to
40 have engaged in a "pattern of failing" if the number of failures to
41 respond to requests from the division for information ¹related to
42 claims for benefits¹ during the previous 365 calendar days is less
43 than ¹[two] three¹, or if the number of failures is less than two
44 percent of the number of requests from the division, whichever is
45 greater.

46 (cf: P.L.2011, c.87, s.1)

S2739 [1R]

7

1 2. This act shall take effect immediately.

2

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4

5

6 Prohibits relieving certain charges of employer unemployment
7 insurance accounts.

SENATE, No. 2739

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 9, 2013

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Prohibits relieving certain charges of employer unemployment insurance accounts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the charging of employer accounts for purposes
2 of unemployment compensation payments and amending
3 R.S.43:21-6.

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

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

9 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
10 accordance with such regulations as the Director of the Division of
11 Unemployment and Temporary Disability Insurance of the
12 Department of Labor and Workforce Development of the State of
13 New Jersey may approve. Each employer shall post and maintain
14 on his premises printed notices of his subject status, of such design,
15 in such numbers and at such places as the director of the division
16 may determine to be necessary to give notice thereof to persons in
17 the employer's service. Each employer shall give to each individual
18 at the time he becomes unemployed, for any reason, whether the
19 unemployment is permanent or temporary, a printed copy of benefit
20 instructions. The benefit instructions given to the individual shall
21 include, but not be limited to, the following information: (A) the
22 date upon which the individual becomes unemployed, and, in the
23 case that the unemployment is temporary, to the extent possible, the
24 date upon which the individual is expected to be recalled to work;
25 and (B) that the individual may lose some or all of the benefits to
26 which he is entitled if he fails to file a claim in a timely manner.
27 Both the aforesaid notices and instructions, including information
28 detailing the time sensitivity of filing a claim, shall be supplied by
29 the division to employers without cost to them. Nothing in this
30 section shall be construed so as to require an employer to re-hire an
31 individual formerly in the employer's service.

32 (2) Any claimant, except for a claimant who has, for any period
33 during his base year, served in the military, worked for the federal
34 government, or worked outside the State of New Jersey, may
35 choose to certify, cancel or close his claim for unemployment
36 insurance benefits at any time, 24 hours a day and seven days a
37 week, via the Internet on a website developed by the division;
38 however, any claim that is certified, cancelled or closed after 7:00
39 PM will not be processed by the division until the next scheduled
40 posting date.

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

43 A representative or representatives designated by the director of
44 the division and hereafter referred to as a "deputy" shall promptly
45 examine the claim, and shall notify the most recent employing unit

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 and, successively as necessary, each employer in inverse
2 chronological order during the base year. Such notification shall
3 require said employing unit and employer to furnish such
4 information to the deputy as may be necessary to determine the
5 claimant's eligibility and his benefit rights with respect to the
6 employer in question.

7 In his discretion, the director may appoint special deputies to
8 make initial or subsequent determinations under subsection (f) of
9 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

10 If any employer or employing unit fails to respond to the request
11 for information within 10 days after the mailing, or communicating
12 by electronic means, of such request, the deputy shall rely entirely
13 on information from other sources, including an affidavit to the best
14 of the knowledge and belief of the claimant with respect to his
15 wages and time worked. Except in the event of fraud, if it is
16 determined that any information in such affidavit is erroneous, no
17 penalty shall be imposed on the claimant.

18 The deputy shall promptly make an initial determination based
19 upon the available information. The initial determination shall
20 show the weekly benefit amount payable, the maximum duration of
21 benefits with respect to the employer to whom the determination
22 relates, and the ratio of benefits chargeable to the employer's
23 account for benefit years commencing on or after July 1, 1986, and
24 also shall show whether the claimant is ineligible or disqualified for
25 benefits under the initial determination. The claimant and the
26 employer whose account may be charged for benefits payable
27 pursuant to said determination shall be promptly notified thereof.

28 Whenever an initial determination is based upon information
29 other than that supplied by an employer because such employer
30 failed to respond to the deputy's request for information, such initial
31 determination and any subsequent determination thereunder shall be
32 incontestable by the noncomplying employer, as to any charges to
33 his employer's account because of benefits paid prior to the close of
34 the calendar week following the receipt of his reply. Such initial
35 determination shall be altered if necessary upon receipt of
36 information from the employer, and any benefits paid or payable
37 with respect to weeks occurring subsequent to the close of the
38 calendar week following the receipt of the employer's reply shall be
39 paid in accordance with such altered initial determination.

40 The deputy shall issue a separate initial benefit determination
41 with respect to each of the claimant's base year employers, starting
42 with the most recent employer and continuing as necessary in the
43 inverse chronological order of the claimant's last date of
44 employment with each such employer. If an appeal is taken from
45 an initial determination, as hereinafter provided, by any employer
46 other than the first chargeable base year employer or for benefit
47 years commencing on or after July 1, 1986, that employer from
48 whom the individual was most recently separated, then such appeal

1 shall be limited in scope to include only one or more of the
2 following matters:

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

5 (B) Fraud in connection with the claim pursuant to which the
6 initial determination is issued;

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

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

11 The amount of benefits payable under an initial determination
12 may be reduced or canceled if necessary to avoid payment of
13 benefits for a number of weeks in excess of the maximum specified
14 in subsection (d) of R.S.43:21-3.

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

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

41 Notwithstanding any other provisions of this Title, if an
42 individual shows to the satisfaction of the deputy that there were at
43 least 13 weeks in his base period in each of which he earned wages
44 from two or more employers totaling \$30.00 or more but in each of
45 which there was no single employer from whom he earned as much
46 as \$100.00, then such individual's claim shall be determined in
47 accordance with the special provisions of this paragraph. In such
48 case, the deputy shall determine the individual's eligibility for

1 benefits, his average weekly wage, weekly benefit rate and
2 maximum total benefits as if all his base year employers were a
3 single employer. Such determination shall apportion the liability
4 for benefit charges thereunder to the individual's several base year
5 employers so that each employer's maximum liability for charges
6 thereunder bears approximately the same relation to the maximum
7 total benefits allowed as the wages earned by the individual from
8 each employer during the base year bears to his total wages earned
9 from all employers during the base year. Such initial determination
10 shall also specify the individual's last date of employment within
11 the base year with respect to each base year employer, and such
12 employers shall be charged for benefits paid under said initial
13 determination in the inverse chronological order of such last date of
14 employment.

15 (3) Procedure for making subsequent determinations with
16 respect to benefit years commencing on or after January 1, 1953.
17 The deputy shall make determinations with respect to claims for
18 benefits thereafter in the course of the benefit year, in accordance
19 with any initial determination allowing benefits, and under which
20 benefits have not been exhausted, and each notification of a benefit
21 payment shall be a notification of an affirmative subsequent
22 determination. The allowance of benefits by the deputy on any such
23 determination, or the denial of benefits by the deputy on any such
24 determination, shall be appealable in the same manner and under
25 the same limitations as is provided in the case of initial
26 determinations.

27 (c) Appeals. Unless such appeal is withdrawn, an appeal
28 tribunal, after affording the parties reasonable opportunity for fair
29 hearing, shall affirm or modify the findings of fact and the
30 determination. The parties shall be duly notified of such tribunal's
31 decision, together with its reasons therefor, which shall be deemed
32 to be the final decision of the board of review, unless further appeal
33 is initiated pursuant to subsection (e) of this section within 10 days
34 after the date of notification or mailing of the decision for any
35 decision made on or before December 1, 2010, or within 20 days
36 after the date of notification or mailing of such decision for any
37 decision made after December 1, 2010.

38 (d) Appeal tribunals. To hear and decide disputed benefit
39 claims, including appeals from determinations with respect to
40 demands for refunds of benefits under subsection (d) of R.S.43:21-
41 16, the director with the approval of the Commissioner of Labor and
42 Workforce Development shall establish impartial appeal tribunals
43 consisting of a salaried body of examiners under the supervision of
44 a Chief Appeals Examiner, all of whom shall be appointed pursuant
45 to the provisions of Title 11A of the New Jersey Statutes, Civil
46 Service and other applicable statutes.

47 (e) Board of review. The board of review may on its own
48 motion affirm, modify, or set aside any decision of an appeal

1 tribunal on the basis of the evidence previously submitted in such
2 case, or direct the taking of additional evidence, or may permit any
3 of the parties to such decision to initiate further appeals before it.
4 The board of review shall permit such further appeal by any of the
5 parties interested in a decision of an appeal tribunal which is not
6 unanimous and from any determination which has been overruled or
7 modified by any appeal tribunal. The board of review may remove
8 to itself or transfer to another appeal tribunal the proceedings on
9 any claim pending before an appeal tribunal. Any proceedings so
10 removed to the board of review shall be heard by a quorum thereof
11 in accordance with the requirements of subsection (c) of this
12 section. The board of review shall promptly notify the interested
13 parties of its findings and decision.

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

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

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

46 (i) Failure to give notice. The failure of any public officer or
47 employee at any time heretofore or hereafter to give notice of
48 determination or decision required in subsections (b), (c) and (e) of

1 this section, as originally passed or amended, shall not relieve any
2 employer's account of any charge by reason of any benefits paid,
3 unless and until that employer can show to the satisfaction of the
4 director of the division that the said benefits, in whole or in part,
5 would not have been charged or chargeable to his account had such
6 notice been given. Any determination hereunder by the director
7 shall be subject to court review.

8 (j) With respect to benefit payments made on or after October
9 22, 2013, an employer's account shall not be relieved of charges
10 related to a benefit payment that was made erroneously from the
11 division if it is determined that:

12 (1) The erroneous benefit payment was made because the
13 employer, or an agent of the employer, failed to respond in a timely
14 or adequate manner to a request from the division for information
15 related to the claim for benefits; and

16 (2) The employer, or an agent of the employer, has established a
17 pattern of failing to respond in a timely or adequate manner to a
18 request from the division for information related to a claim for
19 benefits.

20 Determinations of the division prohibiting the relief of charges
21 pursuant to this subsection shall be subject to appeal in the same
22 manner as other determinations of the division related to the
23 charging of employer accounts.

24 For purposes of subsection (j) of this section:

25 "Erroneous benefit payment" means a benefit payment that,
26 except for the failure by the employer, or an agent of the employer,
27 to respond in a timely or adequate manner to a request from the
28 division for information with respect to the claim for benefits,
29 would not have been made; and

30 "Pattern of failing" means repeated documented failure on the
31 part of the employer, or an agent of the employer, to respond to
32 requests from the division for information related to a claim for
33 benefits, except that an employer, or an agent of an employer, shall
34 not be determined to have engaged in a "pattern of failing" if the
35 number of failures to respond to requests from the division for
36 information during the previous 365 calendar days is less than two,
37 or if the number of failures is less than two percent of the number of
38 requests from the division, whichever is greater.

39 (cf: P.L.2011, c.87, s.1)

40
41 2. This act shall take effect immediately.

42
43
44 STATEMENT

45
46 This bill provides that an employer's unemployment insurance
47 account will not be relieved of charges related to a benefit payment
48 that was made erroneously if it is determined by the Department of

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8

1 Labor and Workforce Development that the erroneous payment was
2 made because the employer, or an agent of the employer, failed to
3 respond in a timely or adequate manner to a request for information
4 from the department, and the employer or agent engaged in a
5 pattern of failing to respond to requests for information from the
6 department.

7 The provisions of the bill will apply to erroneous benefit
8 payments made on or after October 22, 2013.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2739

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 2013

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 2739.

As amended by the committee, this bill provides that an employer's unemployment insurance account will not be relieved of charges related to a benefit payment that was made erroneously if it is determined by the Department of Labor and Workforce Development that the erroneous payment was made because the employer, or an agent of the employer, failed to respond in a timely or adequate manner to a request for information from the department, and the employer or agent engaged in a pattern of failing to respond to requests for information from the department.

The provisions of the bill will apply to erroneous benefit payments made on or after October 22, 2013.

The amendments adopted by the committee clarify that there is no pattern of failing to respond to requests if the number of failures to respond is less than three during the preceding 365 days. In other words, there must be at least three failures to respond in that period to establish a pattern of failure.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2739

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Senate Bill No. 2739 (1R).

The bill provides that an employer's unemployment insurance account will not be relieved of charges related to a benefit payment that was made erroneously if it is determined by the Department of Labor and Workforce Development that the erroneous payment was made because the employer, or an agent of the employer, failed to respond in a timely or adequate manner to a request for information from the department, and the employer or agent engaged in a pattern of failing to respond to requests for information from the department.

The provisions of the bill apply to erroneous benefit payments made on or after October 22, 2013.

As reported, this bill is identical to Assembly Bill No. 4187, as also reported by the committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.

ASSEMBLY, No. 4187

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 10, 2013

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Prohibits relieving certain charges of employer unemployment insurance accounts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the charging of employer accounts for purposes
2 of unemployment compensation payments and amending
3 R.S.43:21-6.

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

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

9 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
10 accordance with such regulations as the Director of the Division of
11 Unemployment and Temporary Disability Insurance of the
12 Department of Labor and Workforce Development of the State of
13 New Jersey may approve. Each employer shall post and maintain
14 on his premises printed notices of his subject status, of such design,
15 in such numbers and at such places as the director of the division
16 may determine to be necessary to give notice thereof to persons in
17 the employer's service. Each employer shall give to each individual
18 at the time he becomes unemployed, for any reason, whether the
19 unemployment is permanent or temporary, a printed copy of benefit
20 instructions. The benefit instructions given to the individual shall
21 include, but not be limited to, the following information: (A) the
22 date upon which the individual becomes unemployed, and, in the
23 case that the unemployment is temporary, to the extent possible, the
24 date upon which the individual is expected to be recalled to work;
25 and (B) that the individual may lose some or all of the benefits to
26 which he is entitled if he fails to file a claim in a timely manner.
27 Both the aforesaid notices and instructions, including information
28 detailing the time sensitivity of filing a claim, shall be supplied by
29 the division to employers without cost to them. Nothing in this
30 section shall be construed so as to require an employer to re-hire an
31 individual formerly in the employer's service.

32 (2) Any claimant, except for a claimant who has, for any period
33 during his base year, served in the military, worked for the federal
34 government, or worked outside the State of New Jersey, may
35 choose to certify, cancel or close his claim for unemployment
36 insurance benefits at any time, 24 hours a day and seven days a
37 week, via the Internet on a website developed by the division;
38 however, any claim that is certified, cancelled or closed after 7:00
39 PM will not be processed by the division until the next scheduled
40 posting date.

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

43 A representative or representatives designated by the director of
44 the division and hereafter referred to as a "deputy" shall promptly
45 examine the claim, and shall notify the most recent employing unit
46 and, successively as necessary, each employer in inverse
47 chronological order during the base year. Such notification shall

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 require said employing unit and employer to furnish such
2 information to the deputy as may be necessary to determine the
3 claimant's eligibility and his benefit rights with respect to the
4 employer in question.

5 In his discretion, the director may appoint special deputies to
6 make initial or subsequent determinations under subsection (f) of
7 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

8 If any employer or employing unit fails to respond to the request
9 for information within 10 days after the mailing, or communicating
10 by electronic means, of such request, the deputy shall rely entirely
11 on information from other sources, including an affidavit to the best
12 of the knowledge and belief of the claimant with respect to his
13 wages and time worked. Except in the event of fraud, if it is
14 determined that any information in such affidavit is erroneous, no
15 penalty shall be imposed on the claimant.

16 The deputy shall promptly make an initial determination based
17 upon the available information. The initial determination shall
18 show the weekly benefit amount payable, the maximum duration of
19 benefits with respect to the employer to whom the determination
20 relates, and the ratio of benefits chargeable to the employer's
21 account for benefit years commencing on or after July 1, 1986, and
22 also shall show whether the claimant is ineligible or disqualified for
23 benefits under the initial determination. The claimant and the
24 employer whose account may be charged for benefits payable
25 pursuant to said determination shall be promptly notified thereof.

26 Whenever an initial determination is based upon information
27 other than that supplied by an employer because such employer
28 failed to respond to the deputy's request for information, such initial
29 determination and any subsequent determination thereunder shall be
30 incontestable by the noncomplying employer, as to any charges to
31 his employer's account because of benefits paid prior to the close of
32 the calendar week following the receipt of his reply. Such initial
33 determination shall be altered if necessary upon receipt of
34 information from the employer, and any benefits paid or payable
35 with respect to weeks occurring subsequent to the close of the
36 calendar week following the receipt of the employer's reply shall be
37 paid in accordance with such altered initial determination.

38 The deputy shall issue a separate initial benefit determination
39 with respect to each of the claimant's base year employers, starting
40 with the most recent employer and continuing as necessary in the
41 inverse chronological order of the claimant's last date of
42 employment with each such employer. If an appeal is taken from
43 an initial determination, as hereinafter provided, by any employer
44 other than the first chargeable base year employer or for benefit
45 years commencing on or after July 1, 1986, that employer from
46 whom the individual was most recently separated, then such appeal
47 shall be limited in scope to include only one or more of the
48 following matters:

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

3 (B) Fraud in connection with the claim pursuant to which the
4 initial determination is issued;

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

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

9 The amount of benefits payable under an initial determination
10 may be reduced or canceled if necessary to avoid payment of
11 benefits for a number of weeks in excess of the maximum specified
12 in subsection (d) of R.S.43:21-3.

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

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

39 Notwithstanding any other provisions of this Title, if an
40 individual shows to the satisfaction of the deputy that there were at
41 least 13 weeks in his base period in each of which he earned wages
42 from two or more employers totaling \$30.00 or more but in each of
43 which there was no single employer from whom he earned as much
44 as \$100.00, then such individual's claim shall be determined in
45 accordance with the special provisions of this paragraph. In such
46 case, the deputy shall determine the individual's eligibility for
47 benefits, his average weekly wage, weekly benefit rate and
48 maximum total benefits as if all his base year employers were a

1 single employer. Such determination shall apportion the liability
2 for benefit charges thereunder to the individual's several base year
3 employers so that each employer's maximum liability for charges
4 thereunder bears approximately the same relation to the maximum
5 total benefits allowed as the wages earned by the individual from
6 each employer during the base year bears to his total wages earned
7 from all employers during the base year. Such initial determination
8 shall also specify the individual's last date of employment within
9 the base year with respect to each base year employer, and such
10 employers shall be charged for benefits paid under said initial
11 determination in the inverse chronological order of such last date of
12 employment.

13 (3) Procedure for making subsequent determinations with
14 respect to benefit years commencing on or after January 1, 1953.
15 The deputy shall make determinations with respect to claims for
16 benefits thereafter in the course of the benefit year, in accordance
17 with any initial determination allowing benefits, and under which
18 benefits have not been exhausted, and each notification of a benefit
19 payment shall be a notification of an affirmative subsequent
20 determination. The allowance of benefits by the deputy on any such
21 determination, or the denial of benefits by the deputy on any such
22 determination, shall be appealable in the same manner and under
23 the same limitations as is provided in the case of initial
24 determinations.

25 (c) Appeals. Unless such appeal is withdrawn, an appeal
26 tribunal, after affording the parties reasonable opportunity for fair
27 hearing, shall affirm or modify the findings of fact and the
28 determination. The parties shall be duly notified of such tribunal's
29 decision, together with its reasons therefor, which shall be deemed
30 to be the final decision of the board of review, unless further appeal
31 is initiated pursuant to subsection (e) of this section within 10 days
32 after the date of notification or mailing of the decision for any
33 decision made on or before December 1, 2010, or within 20 days
34 after the date of notification or mailing of such decision for any
35 decision made after December 1, 2010.

36 (d) Appeal tribunals. To hear and decide disputed benefit
37 claims, including appeals from determinations with respect to
38 demands for refunds of benefits under subsection (d) of R.S.43:21-
39 16, the director with the approval of the Commissioner of Labor and
40 Workforce Development shall establish impartial appeal tribunals
41 consisting of a salaried body of examiners under the supervision of
42 a Chief Appeals Examiner, all of whom shall be appointed pursuant
43 to the provisions of Title 11A of the New Jersey Statutes, Civil
44 Service and other applicable statutes.

45 (e) Board of review. The board of review may on its own
46 motion affirm, modify, or set aside any decision of an appeal
47 tribunal on the basis of the evidence previously submitted in such
48 case, or direct the taking of additional evidence, or may permit any

1 of the parties to such decision to initiate further appeals before it.
2 The board of review shall permit such further appeal by any of the
3 parties interested in a decision of an appeal tribunal which is not
4 unanimous and from any determination which has been overruled or
5 modified by any appeal tribunal. The board of review may remove
6 to itself or transfer to another appeal tribunal the proceedings on
7 any claim pending before an appeal tribunal. Any proceedings so
8 removed to the board of review shall be heard by a quorum thereof
9 in accordance with the requirements of subsection (c) of this
10 section. The board of review shall promptly notify the interested
11 parties of its findings and decision.

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

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

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

44 (i) Failure to give notice. The failure of any public officer or
45 employee at any time heretofore or hereafter to give notice of
46 determination or decision required in subsections (b), (c) and (e) of
47 this section, as originally passed or amended, shall not relieve any
48 employer's account of any charge by reason of any benefits paid,

1 unless and until that employer can show to the satisfaction of the
2 director of the division that the said benefits, in whole or in part,
3 would not have been charged or chargeable to his account had such
4 notice been given. Any determination hereunder by the director
5 shall be subject to court review.

6 (j) With respect to benefit payments made on or after October
7 22, 2013, an employer's account shall not be relieved of charges
8 related to a benefit payment that was made erroneously from the
9 division if it is determined that:

10 (1) The erroneous benefit payment was made because the
11 employer, or an agent of the employer, failed to respond in a timely
12 or adequate manner to a request from the division for information
13 related to the claim for benefits; and

14 (2) The employer, or an agent of the employer, has established a
15 pattern of failing to respond in a timely or adequate manner to
16 requests from the division for information related to claims for
17 benefits.

18 Determinations of the division prohibiting the relief of charges
19 pursuant to this subsection shall be subject to appeal in the same
20 manner as other determinations of the division related to the
21 charging of employer accounts.

22 For purposes of subsection (j) of this section:

23 "Erroneous benefit payment" means a benefit payment that,
24 except for the failure by the employer, or an agent of the employer,
25 to respond in a timely or adequate manner to a request from the
26 division for information with respect to the claim for benefits,
27 would not have been made; and

28 "Pattern of failing" means repeated documented failure on the
29 part of the employer, or an agent of the employer, to respond to
30 requests from the division to the employer or employer's agent for
31 information related to a claim for benefits, except that an employer,
32 or an agent of an employer, shall not be determined to have engaged
33 in a "pattern of failing" if the number of failures to respond to
34 requests from the division for information related to claims for
35 benefits during the previous 365 calendar days is less than three, or
36 if the number of failures is less than two percent of the number of
37 requests from the division, whichever is greater.

38 (cf: P.L.2011, c.87, s.1)

39

40 2. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill provides that an employer's unemployment insurance
46 account will not be relieved of charges related to a benefit payment
47 that was made erroneously if it is determined by the Department of
48 Labor and Workforce Development that the erroneous payment was

1 made because the employer, or an agent of the employer, failed to
2 respond in a timely or adequate manner to a request for information
3 from the department, and the employer or agent engaged in a
4 pattern of failing to respond to requests for information from the
5 department.

6 The provisions of the bill will apply to erroneous benefit
7 payments made on or after October 22, 2013.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4187

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4187.

The bill provides that an employer's unemployment insurance account will not be relieved of charges related to a benefit payment that was made erroneously if it is determined by the Department of Labor and Workforce Development that the erroneous payment was made because the employer, or an agent of the employer, failed to respond in a timely or adequate manner to a request for information from the department, and the employer or agent engaged in a pattern of failing to respond to requests for information from the department.

The provisions of the bill apply to erroneous benefit payments made on or after October 22, 2013.

As reported, this bill is identical to Senate Bill No. 2739 (1R), as also reported by the committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.