

43:21-6 & 43:21-16
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2022 **CHAPTER:** 120
NJSA: 43:21-6 & 43:21-16
(Concerns timely payment of UI benefits.)
BILL NO: S2357 (Substituted for A3830 (ACS))

SPONSOR(S) Fred H. Madden and others

DATE INTRODUCED: 3/21/2022

COMMITTEE: **ASSEMBLY:** ---
SENATE: Labor

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 10/27/2022
SENATE: 10/17/2022

DATE OF APPROVAL: 11/3/2022

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL
(Senate Committee Substitute (First Reprint) enacted) Yes

S2357

INTRODUCED BILL: (Includes sponsor(s) statement) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: Yes Labor

(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

A3830 (ACS)

INTRODUCED BILL: (Includes sponsor(s) statement) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes Labor
State & Local Gov.
SENATE: No

(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

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

end

P.L. 2022, CHAPTER 120, *approved November 3, 2022*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 2357

1 AN ACT concerning the timely payment of unemployment
2 compensation benefits and amending R.S.43:21-6 and R.S.43:21-
3 16.

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, and directions
29 provided in advance to all employers regarding what information
30 the division requires employers to provide to the division by
31 electronic means immediately upon a separation from employment
32 sufficient to enable the division to make a benefit determination,
33 including any information relevant to whether the individual may be
34 disqualified pursuant to subsections (a),(b),(d), or (e) of R.S.43:21-
35 5, shall be supplied by the division to employers without cost to
36 them. The directions provided to all employers in advance shall
37 include that each employer provide the division with an email
38 address for communications to and from the division. When an

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 amendments adopted in accordance with Governor's recommendations September 29, 2022.

1 employer provides benefit instructions to the individual which
2 disclose the date on which unemployment will commence, the
3 employer shall immediately and simultaneously provide by
4 electronic means that disclosure to the division together with the
5 information required by the division pursuant to the directions
6 provided in advance by the division. An employer who fails to
7 make the immediate and simultaneous disclosure to the department
8 as required by this paragraph shall be liable for the penalties
9 imposed by subsection (b) of R.S.43:21-16 on employers for willful
10 failure to furnish reports. The division shall notify the employer by
11 electronic means not more than seven calendar days after the
12 department receives the disclosure of any failure of the employer to
13 provide all of the information needed by the division to make a
14 benefit determination. Nothing in this section shall be construed so
15 as to require an employer to re-hire an individual formerly in the
16 employer's service. Nothing in this section shall be construed as
17 requiring the division to issue a benefit determination solely based
18 on the information supplied by the employer. ¹Notwithstanding the
19 provisions of this section which require employers to provide
20 information to the division by electronic means, and the division to
21 provide notifications to an employer by electronic means, the
22 commissioner shall have the discretion to establish by rule an
23 alternate method or methods for employers to provide the required
24 information to the division and for the division to provide the
25 required notifications to an employer in circumstances where it is
26 established, to the satisfaction of the commissioner, that the
27 employer is unable to provide the information to the division or is
28 unable to receive notifications from the division by electronic
29 means.¹

30 (2) Any claimant may choose to certify, cancel or close his
31 claim for unemployment insurance benefits at any time, 24 hours a
32 day and seven days a week, via the Internet on a website developed
33 by the division; however, any claim that is certified, cancelled or
34 closed after 7:00 PM will not be processed by the division until the
35 next scheduled posting date.

36 (3) The division may request that claimants obtain digital
37 identity credentials, but only if the division provides opportunities
38 for claimants to verify their identities even if they do not have the
39 knowledge or access to the equipment needed to obtain the digital
40 identity credentials. Any request by the division for a claimant to
41 obtain digital identity credentials shall include a statement that the
42 claimant may use alternative procedures to verify identification, and
43 fully describe the alternative procedures, which shall include
44 personal assistance in person or by phone which shall be made
45 available by representatives of the division as needed to prevent any
46 delay in processing claims. If the division requests that a claimant
47 obtain digital identity credentials, and the claimant chooses to
48 request a digital identity credential rather than utilize an alternative

1 procedure, but is denied the digital identity credential, the division
2 shall issue the claimant a written appealable determination.

3 (4) Any system that the division establishes for claimants or
4 recipients of benefits to verify identity, to apply for, or to make
5 appeals regarding, benefits either by phone or on-line, shall provide
6 a clearly and prominently expressed option for the claimant or
7 recipient, if not immediately provided personal assistance, to select
8 from available appointment times an appointment time to speak
9 with a representative to obtain assistance in verifying identity, filing
10 a claim or appeal, or obtaining information regarding the status of a
11 claim or appeal.

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

14 A representative or representatives designated by the director of
15 the division and hereafter referred to as a "deputy" shall promptly
16 examine **the** any disclosure of information to the division by an
17 employer required by paragraph (1) of subsection (a) of this section
18 upon a separation from work and any claim for benefits, and shall,
19 by electronic means, notify the most recent employing unit and,
20 successively as necessary, each employer in inverse chronological
21 order during the base year. **Such** The notification shall be made
22 not later than seven calendar days after the employer provides to the
23 department the disclosure required by paragraph (1) of subsection
24 (a) of this section, or seven calendar days after the filing of the
25 claim, whichever occurs first, and require said employing unit and
26 employer to furnish **such**, by electronic means, not more than
27 seven calendar days after the notification is made, any information
28 to the deputy which the employer failed to provide as required by
29 paragraph (1) of subsection (a) of this section as may be necessary
30 to determine the claimant's eligibility and his benefit rights with
31 respect to the employer in question. The claimant shall, at the time
32 the claim is filed, be provided any information the division has
33 received from the employer upon the separation from work and an
34 opportunity to respond to that information. If a claim is filed and
35 the employer has provided the information required upon separation
36 from work, the employer shall immediately be notified by electronic
37 means of the opportunity to provide, by electronic means and in not
38 more than seven calendar days, additional information in response
39 to the claim for benefits. If a claim is filed and the employer has
40 failed to provide the information required upon the separation from
41 work, the division shall immediately, by electronic means, request
42 the required information and the employer shall provide the
43 information, by electronic means and in not more than seven
44 calendar days. The division shall provide the claimant any
45 additional information it receives and an opportunity to respond.

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

4 If any employer or employing unit fails to respond to the
5 notification or request within **【10】** seven calendar days after **【**the
6 mailing, or communicating**】** a communication by electronic
7 means**【,** of **【such】** the notification or request, the deputy shall rely
8 entirely on information from other sources, including an affidavit to
9 the best of the knowledge and belief of the claimant with respect to
10 his wages and time worked. Except in the event of **【fraud】** a
11 knowing, fraudulent nondisclosure or misrepresentation by the
12 claimant or his agent, if it is determined that any information in
13 such affidavit is erroneous, no penalty shall be imposed on the
14 claimant.

15 The deputy shall make an initial determination contingent upon
16 the receipt of all necessary information and notify the claimant no
17 later than three weeks from the date on which the division received
18 the claim for benefits. **【**If an initial determination cannot be made
19 due to the lack of documentation, notification will be sent to the
20 claimant providing a status of the claim. The division will then
21 have an additional two weeks to obtain the missing information in
22 order to make the initial determination and advise the claimant
23 accordingly.**】** The initial determination shall show the weekly
24 benefit amount payable, the maximum duration of benefits with
25 respect to the employer to whom the determination relates, and the
26 ratio of benefits chargeable to the employer's account for benefit
27 years commencing on or after July 1, 1986, and also shall show
28 whether the claimant is ineligible or disqualified for benefits under
29 the initial determination. The employer whose account may be
30 charged for benefits payable pursuant to said determination shall be
31 promptly notified thereof.

32 Whenever an initial determination is based upon information
33 other than that supplied by an employer because such employer
34 failed to provide information as required at the time of separation
35 from employment, and failed to respond to the deputy's request for
36 additional information, benefit payments based on the determination
37 shall commence immediately, and such initial determination and
38 any subsequent determination thereunder shall be incontestable by
39 the noncomplying employer, as to any charges to his employer's
40 account because of benefits paid prior to the close of the calendar
41 week following the receipt of his reply. Such initial determination
42 shall be altered if necessary upon receipt of information from the
43 employer, and any benefits paid or payable with respect to weeks
44 occurring subsequent to the close of the calendar week following
45 the receipt of the employer's reply and the determination of the
46 division to alter the initial determination after providing the

1 claimant the information and an opportunity to respond shall be
2 paid in accordance with such altered initial determination.

3 The deputy shall issue a separate initial benefit determination
4 with respect to each of the claimant's base year employers, starting
5 with the most recent employer and continuing as necessary in the
6 inverse chronological order of the claimant's last date of
7 employment with each such employer. If an appeal is taken from
8 an initial determination, as hereinafter provided, by any employer
9 other than the first chargeable base year employer or for benefit
10 years commencing on or after July 1, 1986, that employer from
11 whom the individual was most recently separated, then such appeal
12 shall be limited in scope to include only one or more of the
13 following matters:

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

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

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

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

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

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

29 Unless the **【claimant or any interested party】** employer, within
30 seven calendar days after **【delivery】** a confirmed receipt of
31 notification of an initial determination, including by electronic
32 means, or the claimant, within **【10】** 21 calendar days after **【such】**
33 the notification was mailed to **【his or their】** the claimant's last-
34 known address and addresses, files an appeal **【from such】** of the
35 decision, **【such】** the decision shall be final and benefits shall
36 immediately be paid or denied in accordance therewith, except for
37 such determinations as may be altered in benefit amounts or
38 duration as provided in this paragraph. An appeal concerning an
39 initial determination shall not be filed after whichever is applicable
40 of the seven-day or 21-day period. Benefits payable for periods
41 pending an appeal **【and not in dispute】** shall be paid as such
42 benefits accrue and be paid according to the initial determination
43 but shall be, to the extent that the amount paid exceeds the amount
44 determined in the appeal, regarded as an overpayment subject to the
45 provisions of R.S.43:21-16 regarding overpayments, including the
46 requirement of that section that a claimant who makes knowing,
47 fraudulent nondisclosure or misrepresentation is liable to repay the

1 full amount of the overpayment; provided that **[insofar as any such]**
2 if the appeal is [or may be] an appeal [from] of a determination
3 **[to the effect]** that the claimant is disqualified under the provisions
4 of R.S.43:21-5 **[or any amendments thereof or supplements**
5 **thereto]**, benefits pending determination of the appeal shall be
6 withheld only for the period of disqualification as provided for in
7 **[said] that section, and [notwithstanding such] while the appeal is**
8 pending, the benefits otherwise provided by this act shall be paid
9 for the period subsequent to such period of disqualification;
10 provided further that if it is determined in the appeal that the
11 claimant was not disqualified, the claimant shall be paid the
12 benefits due for the period of the disqualification¹, except that no
13 such benefits shall be paid to the claimant for any week during
14 which the claimant has failed to provide to the division a weekly
15 certification evidencing the claimant's eligibility for benefits¹; and
16 provided, also, that if there are two determinations of entitlement,
17 benefits for the period covered by such determinations shall be paid
18 regardless of any appeal which may thereafter be taken, but no
19 employer's account shall be charged with benefits so paid, if the
20 decision is finally reversed. If an employer appeals the charging of
21 benefits to the employer's account after the seven-day period to
22 appeal the initial benefit determination, and, as a result of the
23 appeal on the charging to the employer's account, the division, after
24 the claimant is notified and given the opportunity to respond,
25 reduces the amount charged to the employer's account, any
26 resulting reduction in the amount of benefits shall take effect only
27 after the resolution of the appeal of the charging, and any amount of
28 benefits paid before the resolution of the appeal of the charging
29 which exceeds the amount determined in that appeal shall be
30 regarded as an overpayment caused by employer error and shall be
31 charged to the employer's account, and the claimant shall not be
32 liable to repay any portion of that overpayment¹ where the
33 overpayment is of regular Unemployment Compensation. In the
34 case of the recovery of an overpayment of benefit under any of the
35 following programs authorized by the federal "Coronavirus Aid,
36 Relief, and Economic Security (CARES) Act," Pub.L.116-136:
37 Federal Pandemic Unemployment Compensation (FPUC),
38 Pandemic Emergency Unemployment Compensation (PEUC),
39 Mixed Earners Unemployment Compensation (MEUC), Pandemic
40 Unemployment Assistance (PUA), or the first week of regular
41 Unemployment Compensation that is reimbursed in accordance
42 with Section 2105 of the CARES Act, a recovery shall not be
43 waived unless the division determines that the claimant is without
44 fault and the repayment would be contrary to equity and good
45 conscience¹.

46 (2) **[Procedure for making initial determinations in certain cases**
47 of concurrent employment, with respect to benefit years

1 commencing on or after January 1, 1953 and prior to benefit years
2 commencing on or after July 1, 1986.

3 Notwithstanding any other provisions of this Title, if an
4 individual shows to the satisfaction of the deputy that there were at
5 least 13 weeks in his base period in each of which he earned wages
6 from two or more employers totaling \$30.00 or more but in each of
7 which there was no single employer from whom he earned as much
8 as \$100.00, then such individual's claim shall be determined in
9 accordance with the special provisions of this paragraph. In such
10 case, the deputy shall determine the individual's eligibility for
11 benefits, his average weekly wage, weekly benefit rate and
12 maximum total benefits as if all his base year employers were a
13 single employer. Such determination shall apportion the liability
14 for benefit charges thereunder to the individual's several base year
15 employers so that each employer's maximum liability for charges
16 thereunder bears approximately the same relation to the maximum
17 total benefits allowed as the wages earned by the individual from
18 each employer during the base year bears to his total wages earned
19 from all employers during the base year. Such initial determination
20 shall also specify the individual's last date of employment within
21 the base year with respect to each base year employer, and such
22 employers shall be charged for benefits paid under said initial
23 determination in the inverse chronological order of such last date of
24 employment. **】** (Deleted by amendment, P.L. _____, c. _____) (pending
25 before the Legislature as this bill)

26 (3) Procedure for making subsequent determinations with
27 respect to benefit years commencing on or after January 1, 1953.
28 The deputy shall make determinations with respect to claims for
29 benefits thereafter in the course of the benefit year, in accordance
30 with any initial determination allowing benefits, and under which
31 benefits have not been exhausted, and each notification of a benefit
32 payment shall be a notification of an affirmative subsequent
33 determination. **【The】** Any change in the allowance, amount, or
34 other characteristic of benefits by the deputy **【on】** in any such
35 determination, or the denial of benefits by the deputy **【on】** in any
36 such determination, shall be appealable in the same manner and
37 under the same limitations as is provided in the case of initial
38 determinations. **【. After】**, except that, after an initial determination,
39 the resolution of any appeal of the initial determination, and the
40 payment of one or more weeks of benefits pursuant to the initial
41 determination, if a subsequent determination will result in any
42 termination or reduction of those benefits from the amount or
43 duration of benefits specified in the initial determination, the
44 claimant shall be provided notification with a full written
45 explanation of why the reduction or termination of benefits will
46 occur, and provided, during the seven calendar days following the
47 notification, an opportunity to file an appeal before the reduction or

1 termination goes into effect. If the claimant files an appeal during
2 the seven-day period, benefits shall continue to be paid at the rate,
3 and for the duration, stipulated in the initial determination until the
4 appeal is resolved. If the claimant does not file an appeal, or the
5 claimant files an appeal and it is found in the resolution of the
6 appeal that the amount in benefits paid during the processing of the
7 appeal exceeded the amount determined in the appeal to be correct,
8 or the claimant is found in the appeal to be ineligible for benefits,
9 any resulting excess payment of benefits shall be regarded as an
10 overpayment subject to the provisions of R.S.43:21-16 regarding
11 overpayments, including the requirement of that section that a
12 claimant who makes knowing, fraudulent nondisclosure or
13 misrepresentation is liable to repay the full amount of the
14 overpayment.

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 further appeal
21 is initiated pursuant to subsection (e) of this section within **10** days
22 after the date of notification or mailing of the decision for any
23 decision made on or before December 1, 2010, or within **20** days
24 after the date of notification or mailing of such decision for any
25 decision made after December 1, 2010.

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

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

1 section. The board of review shall promptly notify the interested
2 parties of its findings and decision.

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

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

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

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

46 (j) With respect to benefit payments made on or after October
47 22, 2013, an employer's account shall not be relieved of charges

1 related to a benefit payment that was made erroneously from the
2 division if it is determined that:

3 (1) The erroneous benefit payment was made because the
4 employer, or an agent of the employer, failed to respond in a timely
5 or adequate manner to a request from the division for information
6 related to the claim for benefits, including failing to provide the
7 information required by subsection (a) of this section upon a
8 separation from employment; and

9 (2) The employer, or an agent of the employer, has established a
10 pattern of failing to respond in a timely or adequate manner to
11 requests from the division for information related to claims for
12 benefits, including failing to provide the information required by
13 subsection (a) of this section upon a separation from employment.

14 Determinations of the division prohibiting the relief of charges
15 pursuant to this subsection shall be subject to appeal in the same
16 manner as other determinations of the division related to the
17 charging of employer accounts.

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

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

24 "Pattern of failing" means repeated documented failure on the
25 part of the employer, or an agent of the employer, to respond to
26 requests from the division to the employer or employer's agent for
27 information related to a claim for benefits, including failing to
28 provide the information required by subsection (a) of this section
29 upon a separation from employment, except that an employer, or an
30 agent of an employer, shall not be determined to have engaged in a
31 "pattern of failing" if the number of failures to provide the required
32 information or respond to requests from the division for information
33 related to claims for benefits during the previous 365 calendar days
34 is less than three, or if the number of failures is less than two
35 percent of the number of requests from the division, whichever is
36 greater.

37 (k) The Department of Labor and Workforce Development shall
38 establish and maintain a procedure by which personnel access rights
39 to the department's primary system for unemployment claims
40 receipt and processing are comprehensively reviewed every
41 calendar quarter. The procedure shall include an evaluation of
42 access needs to the primary unemployment claims receipt and
43 processing system for all department personnel and the adjustment,
44 addition, or deletion of access rights for department personnel based
45 on the quarterly review.

46 (cf: P.L.2017, c.163, s.1)

47

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

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

22 (2) For purposes of any unemployment compensation program
23 of the United States, if the department determines that any benefit
24 amount is obtained by an individual due to fraud committed by the
25 individual, the department shall assess a fine on the individual and
26 deposit the recovered fine in the same manner as provided in
27 paragraph (1) of subsection (a) of this section. As used in this
28 paragraph, "unemployment compensation program of the United
29 States" means:

30 (A) Unemployment compensation for federal civilian employees
31 pursuant to 5 U.S.C. 8501 et seq.;

32 (B) Unemployment compensation for ex-service members
33 pursuant to 5 U.S.C. 8521 et seq.;

34 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
35 2294;

36 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
37 5177(a);

38 (E) Any federal temporary extension of unemployment
39 compensation;

40 (F) Any federal program that increases the weekly amount of
41 unemployment compensation payable to individuals; and

42 (G) Any other federal program providing for the payment of
43 unemployment compensation.

44 (b) (1) An employing unit or any officer or agent of an
45 employing unit or any other person who makes a false statement or
46 representation, knowing it to be false, or who knowingly fails to
47 disclose a material fact, to prevent or reduce the payment of
48 benefits to any individual entitled thereto or to avoid becoming or

1 remaining subject hereto or to avoid or reduce any contribution or
2 other payment required from an employing unit under this chapter
3 (R.S.43:21-1 et seq.), or under an employment security law of any
4 other state or of the federal government, or who willfully fails or
5 refuses to furnish any reports or information required hereunder
6 **[(except for such reports as may be required under subsection (b) of**
7 **R.S.43:21-6)], including failing to provide the information required**
8 **by subsection (a) of R.S.43:21-6 immediately upon a separation**
9 **from employment,** or to produce or permit the inspection or copying
10 of records, as required hereunder, shall be liable to a fine of
11 **[\$100.00] \$500,** or 25% of **[the] any** amount fraudulently
12 withheld, whichever is greater, to be recovered in an action at law
13 in the name of the Division of Unemployment and Temporary
14 Disability Insurance of the Department of Labor and Workforce
15 Development of the State of New Jersey or as provided in
16 subsection (e) of R.S.43:21-14, said fine when recovered to be paid
17 to the unemployment compensation auxiliary fund for the use of
18 said fund; and each such false statement or representation or failure
19 to disclose a material fact, and each day of such failure or refusal
20 shall constitute a separate offense. Any penalties imposed by this
21 paragraph shall be in addition to those otherwise prescribed in this
22 chapter (R.S.43:21-1 et seq.).

23 (2) **[Any employing unit or any officer or agent of an**
24 **employing unit or any other person who fails to submit any report**
25 **required under subsection (b) of R.S.43:21-6 shall be subject to a**
26 **penalty of \$25.00 for the first report not submitted within 10 days**
27 **after the mailing of a request for such report, and an additional**
28 **\$25.00 penalty may be assessed for the next 10-day period, which**
29 **may elapse after the end of the initial 10-day period and before the**
30 **report is filed; provided that when such report or reports are not**
31 **filed within the prescribed time but it is shown to the satisfaction of**
32 **the director that the failure was due to a reasonable cause, no such**
33 **penalty shall be imposed. Any penalties imposed by this paragraph**
34 **shall be recovered as provided in subsection (e) of R.S.43:21-14,**
35 **and when recovered shall be paid to the unemployment**
36 **compensation auxiliary fund for the use of said fund.] (Deleted by**
37 **amendment, P.L. , c.) (pending before the Legislature as this**
38 **bill).**

39 (3) Any employing unit, officer or agent of the employing unit,
40 or any other person, determined by the controller to have knowingly
41 violated, or attempted to violate, or advised another person to
42 violate the transfer of employment experience provisions found at
43 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
44 a lower rate of contributions by failing to disclose material
45 information, or by making a false statement, or by a
46 misrepresentation of fact, shall be subject to a fine of \$5,000 or
47 25% of the contributions under-reported or attempted to be under-

1 reported, whichever is greater, to be recovered as provided in
2 subsection (e) of R.S.43:21-14, and when recovered to be paid to
3 the unemployment compensation auxiliary fund for the use of said
4 fund. For the purposes of this subsection, "knowingly" means
5 having actual knowledge of, or acting with deliberate ignorance or
6 reckless disregard for the prohibition involved.

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

20 (d) (1) When it is determined by a representative or
21 representatives designated by the Director of the Division of
22 Unemployment and Temporary Disability Insurance of the
23 Department of Labor and Workforce Development of the State of
24 New Jersey that any person, **【whether (i)】** by reason of the
25 knowing, fraudulent nondisclosure or misrepresentation by him, or
26 by **【another】** anyone acting as his agent, of a material fact
27 **【(whether or not such nondisclosure or misrepresentation was**
28 **known or fraudulent), or (ii) for any other reason】**, has received any
29 sum as benefits under this chapter (R.S.43:21-1 et seq.) while any
30 conditions for the receipt of benefits imposed by this chapter
31 (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was
32 disqualified from receiving benefits, or while otherwise not entitled
33 to receive such sum as benefits, such person, unless the director
34 (with the concurrence of the controller) directs otherwise by
35 regulation, shall be liable to repay those benefits in full. The person
36 shall not be liable to repay all or any portion of the overpayment if
37 the representative finds that the person received the overpayment of
38 benefits because of errors or failures to provide information by the
39 employer or errors by the division, and not because of an error, or
40 knowing, fraudulent nondisclosure or misrepresentation, by the
41 person. If the representative finds that errors made by the person
42 were a cause of the overpayment together with errors of the
43 division, or errors or failures to provide information by the
44 employer, but the person did not make a knowing, fraudulent
45 nondisclosure or misrepresentation, the representative shall
46 determine a portion of the overpayment for which the person is
47 liable taking into consideration possible financial hardship to the
48 person, whether recovery would be against equity and good

1 conscience, and how much the person's errors, compared to errors
2 of the division or employer, contributed to the overpayment
3 occurring, but the amount to which the person shall be liable shall
4 not exceed 50 percent of the overpayment. The employer's account
5 shall not be charged for the amount of an overpayment of benefits if
6 the overpayment was caused by an error of the division and not by
7 any error of the employer, but shall be charged if the overpayment
8 was caused by an error or failure to provide information of the
9 employer. The sum for which the person is found liable to repay
10 shall be deducted from any future benefits payable to the individual
11 under this chapter (R.S.43:21-1 et seq.) or shall be paid by the
12 individual to the division for the unemployment compensation fund,
13 and such sum shall be collectible in the manner provided for by law,
14 including, but not limited to, the filing of a certificate of debt with
15 the Clerk of the Superior Court of New Jersey; provided, however,
16 that, except in the event of fraud, no person shall be liable for any
17 such refunds or deductions against future benefits unless so notified
18 before four years have elapsed from the time the benefits in
19 question were paid. Such person shall be promptly notified of the
20 determination and the reasons therefor. The person shall be
21 provided a written notification of any determination [shall be final
22 unless the person files] regarding the repayment of an overpayment
23 and the opportunity to file an appeal of the determination within
24 [seven calendar days after the delivery of the determination, or
25 within 10 calendar days after such notification was mailed to his
26 last-known address, for any determination made on or before
27 December 1, 2010, and any initial determination made pursuant to
28 paragraph (1) of subsection (b) of R.S.43:21-6 after December 1,
29 2010, or within 20 calendar days after the delivery of such
30 determination, or within 20 calendar days after such notification
31 was mailed to his last-known address, for any determination other
32 than an initial determination made after December 1, 2010] 20
33 calendar days after a confirmed receipt of a notice of the
34 determination or 30 calendar days after the notice was mailed to the
35 last known address of the person, and a recovery of an overpayment
36 shall not commence until the end of whichever is applicable of the
37 20 or 30 day periods and the resolution of any appeal made during
38 those periods.

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

45 (A) Overpayments of unemployment benefits as determined
46 under subsection (d) of R.S.43:21-16 shall be recovered by offset
47 from unemployment benefits otherwise payable under the
48 unemployment compensation law of another state, and

1 overpayments of unemployment benefits as determined under the
2 unemployment compensation law of another state shall be
3 recovered by offset from unemployment benefits otherwise payable
4 under R.S.43:21-1 et seq.; and

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

28 (3) The provisions of this subsection **'[(d)]'** shall not be
29 construed as requiring or permitting a waiver of the **'[full]'**
30 recovery of any overpayments of unemployment benefits if the
31 waiver is prohibited by any federal law, regulation or administrative
32 directive. A recovery shall not be waived unless the division
33 determines that the claimant is without fault and the repayment
34 would be contrary to equity and good conscience in the case of the
35 recovery of an overpayment of benefit under any of the following
36 programs authorized by the federal "Coronavirus Aid, Relief, and
37 Economic Security (CARES) Act," Pub.L.116-136: Federal
38 Pandemic Unemployment Compensation (FPUC), Pandemic
39 Emergency Unemployment Compensation (PEUC), Mixed Earners
40 Unemployment Compensation (MEUC), **'[or]'** Pandemic
41 Unemployment Assistance (PUA)¹, or the first week of regular
42 Unemployment Compensation that is reimbursed in accordance
43 with Section 2105 of the CARES Act"¹.

44 (e) (1) Any employing unit, or any officer or agent of an
45 employing unit, which officer or agent is directly or indirectly
46 responsible for collecting, truthfully accounting for, remitting when
47 payable any contribution, or filing or causing to be filed any report

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

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

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

43 (g) There shall be created in the Division of Unemployment and
44 Temporary Disability Insurance of the Department of Labor and
45 Workforce Development of the State of New Jersey an investigative
46 staff for the purpose of investigating violations referred to in this
47 section and enforcing the provisions thereof.

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

16 (i) The Department of Labor and Workforce Development shall
17 arrange for the electronic receipt of death record notifications from
18 the New Jersey Electronic Death Registration System, pursuant to
19 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a
20 verification system to confirm that benefits paid pursuant to the
21 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
22 et al.), and the "unemployment compensation law," R.S.43:21-1 et
23 seq., are not being paid to deceased individuals.

24 (j) The Department of Labor and Workforce Development shall
25 arrange for the electronic receipt of identifying information from
26 the Department of Corrections, pursuant to section 6 of P.L.1976,
27 c.98 (C.30:1B-6), and from the Administrative Office of the Courts
28 and any county which does not provide county inmate incarceration
29 information to the Administrative Office of the Courts, and
30 establish a verification system to confirm that benefits paid
31 pursuant to the "unemployment compensation law," R.S.43:21-1 et
32 seq., are not being paid to individuals who are incarcerated.

33 (cf: P.L.2013, c.274, s.5)

34

35 3. This act shall take effect on the ¹~~120th~~ 270th¹ day
36 following enactment, except that the division shall, prior to the
37 ¹~~120th~~ 270th¹ day after enactment, take all administrative
38 measures necessary to implement this act, including making all
39 needed changes in forms and materials to be provided to employers,
40 and notifying them of what is required to be in compliance with this
41 act, including the requirements to provide the division with an
42 email address for communication to and from the division and to
43 use electronic means to communicate with the department.

44

45

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48

Concerns timely payment of UI benefits.

SENATE, No. 2357

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 21, 2022

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

Senators Corrado, Schepisi, Singleton and A.M.Bucco

SYNOPSIS

Concerns timely payment of UI benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/9/2022)

1 AN ACT concerning the timely payment of unemployment
2 compensation benefits and amending R.S.43:21-6 and R.S.43:21-
3 16.

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, and directions
29 provided in advance to all employers regarding what information
30 the division requires employers to provide upon a termination of
31 employment to enable the division to make a benefit determination,
32 including information relevant to whether the individual may be
33 disqualified pursuant to subsections (a),(b),(d), or (e) of R.S.43:21-
34 5, shall be supplied by the division to employers without cost to
35 them. When an employer provides benefit instructions to the
36 individual which disclose the date on which unemployment will
37 commence, the employer shall simultaneously provide that
38 disclosure to the division together with information required by the
39 division pursuant to the directions provided in advance by the
40 division. The division shall notify the employer immediately of any
41 failure of the employer to provide information needed by the
42 division to make a benefit determination. Nothing in this section
43 shall be construed so as to require an employer to re-hire an
44 individual formerly in the employer's service.

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 (2) Any claimant may choose to certify, cancel or close his
2 claim for unemployment insurance benefits at any time, 24 hours a
3 day and seven days a week, via the Internet on a website developed
4 by the division; however, any claim that is certified, cancelled or
5 closed after 7:00 PM will not be processed by the division until the
6 next scheduled posting date.

7 (3) The division may request that claimants obtain digital
8 identity credentials, but only if the division provides opportunities
9 for claimants to verify their identities even if they do not have the
10 knowledge or access to the equipment needed to obtain the digital
11 identity credentials. Any request by the division for a claimant to
12 obtain digital identity credentials shall include a statement that the
13 claimant may use other means to verify identification, and fully
14 describe the other means, which shall include personal assistance in
15 person or by phone which shall be made available by
16 representatives of the division as needed to prevent any delays in
17 processing claims.

18 (4) Any system that the division establishes for claimants or
19 recipients of benefits to verify identity, to apply for, or to make
20 appeals regarding, benefits either by phone or on-line, shall provide
21 a clearly and prominently expressed option for the claimant or
22 recipient to select from available appointment times an appointment
23 time to speak with a representative to obtain assistance in verifying
24 identity, filing a claim or appeal, or obtaining information regarding
25 the status of a claim or appeal.

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

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

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

40 If any employer or employing unit fails to respond to the request
41 information within 10 days after the mailing, or communicating by
42 electronic means, of such request

43 If any employer or employing unit fails to respond to **the** a
44 request by the division for required information the employer failed
45 to provide, or for additional needed information, within 10 days
46 after **the** a mailing, or **communicating** a communication by
47 electronic means, of **such** the request, the deputy shall rely
48 entirely on information from other sources, including an affidavit to

1 the best of the knowledge and belief of the claimant with respect to
2 his wages and time worked. Except in the event of **【fraud】** a
3 knowing, fraudulent nondisclosure or misrepresentation by the
4 claimant or his agent, if it is determined that any information in
5 such affidavit is erroneous, no penalty shall be imposed on the
6 claimant.

7 The deputy shall make an initial determination contingent upon
8 the receipt of all necessary information and notify the claimant no
9 later than three weeks from the date on which the division received
10 the claim for benefits**【. If】**, except that, if an initial determination
11 cannot be made due to **【the lack of documentation, notification will**
12 **be sent to the claimant providing a status of the claim. The】** a
13 failure of the employer to provide the required information or other
14 information requested by the division, the division will then have an
15 additional two weeks to obtain the **【missing】** information needed to
16 make a determination, **【in order to】** including by means of a
17 claimant affidavit, and make the initial determination and advise the
18 claimant accordingly. The initial determination shall show the
19 weekly benefit amount payable, the maximum duration of benefits
20 with respect to the employer to whom the determination relates, and
21 the ratio of benefits chargeable to the employer's account for benefit
22 years commencing on or after July 1, 1986, and also shall show
23 whether the claimant is ineligible or disqualified for benefits under
24 the initial determination. The employer whose account may be
25 charged for benefits payable pursuant to said determination shall be
26 promptly notified thereof.

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

43 The deputy shall issue a separate initial benefit determination
44 with respect to each of the claimant's base year employers, starting
45 with the most recent employer and continuing as necessary in the
46 inverse chronological order of the claimant's last date of
47 employment with each such employer. If an appeal is taken from

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

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

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

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

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

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

19 Unless the claimant or any interested party, within seven
20 calendar days after **[delivery]** a confirmed receipt of notification of
21 an initial determination or within **[10]** 21 calendar days after
22 **[such]** the notification was mailed to **[his or]** their last-known
23 address and addresses, files an appeal from such decision, such
24 decision shall be final and benefits shall immediately be paid or
25 denied in accordance therewith, except for such determinations as
26 may be altered in benefit amounts or duration as provided in this
27 paragraph. An appeal concerning an initial determination may not
28 be filed after whichever is applicable of the seven-day or 21-day
29 period. Benefits payable for periods pending an appeal **[and not in**
30 **dispute]** shall be paid as such benefits accrue and be paid according
31 to the initial determination but shall be, to the extent that the
32 amount paid exceeds the amount determined in the appeal, regarded
33 as an overpayment subject to the provisions of R.S.43:21-16
34 regarding overpayments, including the requirement of that section
35 that a claimant who makes knowing, fraudulent nondisclosure or
36 misrepresentation is liable to repay the full amount of the
37 overpayment; provided that **[insofar as any such]** if the appeal is
38 **[or may be]** an appeal **[from]** of a determination **[to the effect]**
39 that the claimant is disqualified under the provisions of R.S.43:21-5
40 **[or any amendments thereof or supplements thereto]**, benefits
41 pending determination of the appeal shall be withheld only for the
42 period of disqualification as provided for in **[said]** that section, and
43 **[notwithstanding such]** while the appeal is pending, the benefits
44 otherwise provided by this act shall be paid for the period
45 subsequent to such period of disqualification; provided further that
46 if it is determined in the appeal that the claimant was not
47 disqualified, the claimant shall be paid the benefits due for the

1 period of the disqualification; and provided, also, that if there are
2 two determinations of entitlement, benefits for the period covered
3 by such determinations shall be paid regardless of any appeal which
4 may thereafter be taken, but no employer's account shall be charged
5 with benefits so paid, if the decision is finally reversed.

6 (2) **【**Procedure for making initial determinations in certain cases
7 of concurrent employment, with respect to benefit years
8 commencing on or after January 1, 1953 and prior to benefit years
9 commencing on or after July 1, 1986.

10 Notwithstanding any other provisions of this Title, if an
11 individual shows to the satisfaction of the deputy that there were at
12 least 13 weeks in his base period in each of which he earned wages
13 from two or more employers totaling \$30.00 or more but in each of
14 which there was no single employer from whom he earned as much
15 as \$100.00, then such individual's claim shall be determined in
16 accordance with the special provisions of this paragraph. In such
17 case, the deputy shall determine the individual's eligibility for
18 benefits, his average weekly wage, weekly benefit rate and
19 maximum total benefits as if all his base year employers were a
20 single employer. Such determination shall apportion the liability
21 for benefit charges thereunder to the individual's several base year
22 employers so that each employer's maximum liability for charges
23 thereunder bears approximately the same relation to the maximum
24 total benefits allowed as the wages earned by the individual from
25 each employer during the base year bears to his total wages earned
26 from all employers during the base year. Such initial determination
27 shall also specify the individual's last date of employment within
28 the base year with respect to each base year employer, and such
29 employers shall be charged for benefits paid under said initial
30 determination in the inverse chronological order of such last date of
31 employment.】 (Deleted by amendment, P.L. _____, c. _____) (now
32 pending before the Legislature as this bill)

33 (3) Procedure for making subsequent determinations with
34 respect to benefit years commencing on or after January 1, 1953.
35 The deputy shall make determinations with respect to claims for
36 benefits thereafter in the course of the benefit year, in accordance
37 with any initial determination allowing benefits, and under which
38 benefits have not been exhausted, and each notification of a benefit
39 payment shall be a notification of an affirmative subsequent
40 determination. **【The】** Any change in the allowance, amount, or
41 other characteristic of benefits by the deputy **【on】** in any such
42 determination, or the denial of benefits by the deputy **【on】** in any
43 such determination, shall be appealable in the same manner and
44 under the same limitations as is provided in the case of initial
45 determinations. After an initial determination, the resolution of any
46 appeal of the initial determination, and the payment of one or more
47 weeks of benefits pursuant to the initial determination, if a

1 subsequent determination will result in any reduction or termination
2 of those benefits, the claimant shall be provided notification with a
3 full written explanation of why the reduction or termination of
4 benefits will occur, and provided, during the seven calendar days
5 following the notification, an opportunity to file an appeal before
6 the reduction or termination goes into effect. If the claimant files
7 an appeal during the seven-day period, benefits shall continue to be
8 paid at the rate stipulated in the initial determination until the
9 appeal is resolved. If the claimant does not file an appeal, or the
10 claimant files an appeal and it is found in the resolution of the
11 appeal that the amount in benefits paid during the processing of the
12 appeal exceeded the amount determined in the appeal to be correct,
13 or the claimant is found in the appeal to be ineligible for benefits,
14 any resulting excess payment of benefits shall be regarded as an
15 overpayment subject to the provisions of R.S.43:21-16 regarding
16 overpayments, including the requirement of that section that a
17 claimant who makes knowing, fraudulent nondisclosure or
18 misrepresentation is liable to repay the full amount of the
19 overpayment.

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

31 (d) Appeal tribunals. To hear and decide disputed benefit
32 claims, including appeals from determinations with respect to
33 demands for refunds of benefits under subsection (d) of R.S.43:21-
34 16, the director with the approval of the Commissioner of Labor and
35 Workforce Development shall establish impartial appeal tribunals
36 consisting of a salaried body of examiners under the supervision of
37 a Chief Appeals Examiner, all of whom shall be appointed pursuant
38 to the provisions of Title 11A of the New Jersey Statutes, Civil
39 Service and other applicable statutes.

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

1 to itself or transfer to another appeal tribunal the proceedings on
2 any claim pending before an appeal tribunal. Any proceedings so
3 removed to the board of review shall be heard by a quorum thereof
4 in accordance with the requirements of subsection (c) of this
5 section. The board of review shall promptly notify the interested
6 parties of its findings and decision.

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

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

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

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

1 (j) With respect to benefit payments made on or after October
2 22, 2013, an employer's account shall not be relieved of charges
3 related to a benefit payment that was made erroneously from the
4 division if it is determined that:

5 (1) The erroneous benefit payment was made because the
6 employer, or an agent of the employer, failed to respond in a timely
7 or adequate manner to a request from the division for information
8 related to the claim for benefits, in a manner consistent with the
9 provisions of R.S.43:21-6; and

10 (2) The employer, or an agent of the employer, has established a
11 pattern of failing to respond in a timely or adequate manner to
12 requests from the division for information related to claims for
13 benefits, in a manner consistent with the provisions of R.S.43:21-6.

14 Determinations of the division prohibiting the relief of charges
15 pursuant to this subsection shall be subject to appeal in the same
16 manner as other determinations of the division related to the
17 charging of employer accounts.

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

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

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

34 (k) The Department of Labor and Workforce Development shall
35 establish and maintain a procedure by which personnel access rights
36 to the department's primary system for unemployment claims
37 receipt and processing are comprehensively reviewed every
38 calendar quarter. The procedure shall include an evaluation of
39 access needs to the primary unemployment claims receipt and
40 processing system for all department personnel and the adjustment,
41 addition, or deletion of access rights for department personnel based
42 on the quarterly review.

43 (cf: P.L.2017, c.163, s.1)

44

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

46 43:21-16. (a) (1) Whoever makes a false statement or
47 representation, knowing it to be false, or knowingly fails to disclose
48 a material fact, to obtain or increase or attempts to obtain or

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

19 (2) For purposes of any unemployment compensation program
20 of the United States, if the department determines that any benefit
21 amount is obtained by an individual due to fraud committed by the
22 individual, the department shall assess a fine on the individual and
23 deposit the recovered fine in the same manner as provided in
24 paragraph (1) of subsection (a) of this section. As used in this
25 paragraph, "unemployment compensation program of the United
26 States" means:

27 (A) Unemployment compensation for federal civilian employees
28 pursuant to 5 U.S.C. 8501 et seq.;

29 (B) Unemployment compensation for ex-service members
30 pursuant to 5 U.S.C. 8521 et seq.;

31 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
32 2294;

33 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
34 5177(a);

35 (E) Any federal temporary extension of unemployment
36 compensation;

37 (F) Any federal program that increases the weekly amount of
38 unemployment compensation payable to individuals; and

39 (G) Any other federal program providing for the payment of
40 unemployment compensation.

41 (b) (1) An employing unit or any officer or agent of an
42 employing unit or any other person who makes a false statement or
43 representation, knowing it to be false, or who knowingly fails to
44 disclose a material fact, to prevent or reduce the payment of
45 benefits to any individual entitled thereto or to avoid becoming or
46 remaining subject hereto or to avoid or reduce any contribution or
47 other payment required from an employing unit under this chapter
48 (R.S.43:21-1 et seq.), or under an employment security law of any

1 other state or of the federal government, or who willfully fails or
2 refuses to furnish any reports required hereunder (except for such
3 reports as may be required under subsection (b) of R.S.43:21-6) or
4 to produce or permit the inspection or copying of records, as
5 required hereunder, shall be liable to a fine of \$100.00, or 25% of
6 the amount fraudulently withheld, whichever is greater, to be
7 recovered in an action at law in the name of the Division of
8 Unemployment and Temporary Disability Insurance of the
9 Department of Labor and Workforce Development of the State of
10 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
11 fine when recovered to be paid to the unemployment compensation
12 auxiliary fund for the use of said fund; and each such false
13 statement or representation or failure to disclose a material fact, and
14 each day of such failure or refusal shall constitute a separate
15 offense. Any penalties imposed by this paragraph shall be in
16 addition to those otherwise prescribed in this chapter (R.S.43:21-1
17 et seq.).

18 (2) Any employing unit or any officer or agent of an employing
19 unit or any other person who fails to submit any report required
20 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
21 \$25.00 for the first report not submitted within 10 days after the
22 mailing of a request for such report, and an additional \$25.00
23 penalty may be assessed for the next 10-day period, which may
24 elapse after the end of the initial 10-day period and before the
25 report is filed; provided that when such report or reports are not
26 filed within the prescribed time but it is shown to the satisfaction of
27 the director that the failure was due to a reasonable cause, no such
28 penalty shall be imposed. Any penalties imposed by this paragraph
29 shall be recovered as provided in subsection (e) of R.S.43:21-14,
30 and when recovered shall be paid to the unemployment
31 compensation auxiliary fund for the use of said fund.

32 (3) Any employing unit, officer or agent of the employing unit,
33 or any other person, determined by the controller to have knowingly
34 violated, or attempted to violate, or advised another person to
35 violate the transfer of employment experience provisions found at
36 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
37 a lower rate of contributions by failing to disclose material
38 information, or by making a false statement, or by a
39 misrepresentation of fact, shall be subject to a fine of \$5,000 or
40 25% of the contributions under-reported or attempted to be under-
41 reported, whichever is greater, to be recovered as provided in
42 subsection (e) of R.S.43:21-14, and when recovered to be paid to
43 the unemployment compensation auxiliary fund for the use of said
44 fund. For the purposes of this subsection, "knowingly" means
45 having actual knowledge of, or acting with deliberate ignorance or
46 reckless disregard for the prohibition involved.

47 (c) Any person who shall willfully violate any provision of this
48 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,

1 the violation of which is made unlawful or the observance of which
2 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
3 for which a penalty is neither prescribed herein nor provided by any
4 other applicable statute, shall be liable to a fine of \$50.00, to be
5 recovered in an action at law in the name of the Division of
6 Unemployment and Temporary Disability Insurance of the
7 Department of Labor and Workforce Development of the State of
8 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
9 fine when recovered to be paid to the unemployment compensation
10 auxiliary fund for the use of said fund; and each day such violation
11 continues shall be deemed to be a separate offense.

12 (d) (1) When it is determined by a representative or
13 representatives designated by the Director of the Division of
14 Unemployment and Temporary Disability Insurance of the
15 Department of Labor and Workforce Development of the State of
16 New Jersey that any person, **【whether (i)】** by reason of the
17 knowing, fraudulent nondisclosure or misrepresentation by him, or
18 by **【another】** anyone acting as his agent, of a material fact
19 **【(whether or not such nondisclosure or misrepresentation was**
20 **known or fraudulent), or (ii) for any other reason】**, has received any
21 sum as benefits under this chapter (R.S.43:21-1 et seq.) while any
22 conditions for the receipt of benefits imposed by this chapter
23 (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was
24 disqualified from receiving benefits, or while otherwise not entitled
25 to receive such sum as benefits, such person, unless the director
26 (with the concurrence of the controller) directs otherwise by
27 regulation, shall be liable to repay those benefits in full. The person
28 shall not be liable to repay all or any portion of the overpayment if
29 the representative finds that the person received the overpayment of
30 benefits because of errors or failures to provide information by the
31 employer or errors by the division, and not because of an error, or
32 knowing, fraudulent nondisclosure or misrepresentation, by the
33 person. If the representative finds that errors made by the person
34 were a cause of the overpayment together with errors of the
35 division, or errors or failures to provide information by the
36 employer, but the person did not make a knowing, fraudulent
37 nondisclosure or misrepresentation, the representative shall
38 determine a portion of the overpayment for which the person is
39 liable taking into consideration possible financial hardship to the
40 person, whether recovery would be against equity and good
41 conscience, and how much the person's errors, compared to errors
42 of the division or employer, contributed to the overpayment
43 occurring, but the amount to which the person shall be liable shall
44 not exceed 50 percent of the overpayment. The employer's account
45 shall not be charged for the amount of an overpayment of benefits if
46 the overpayment was caused by an error of the division and not by
47 any error of the employer, but shall be charged if the overpayment
48 was caused by an error or failure to provide information of the

1 employer. The sum for which the person is found liable to repay
2 shall be deducted from any future benefits payable to the individual
3 under this chapter (R.S.43:21-1 et seq.) or shall be paid by the
4 individual to the division for the unemployment compensation fund,
5 and such sum shall be collectible in the manner provided for by law,
6 including, but not limited to, the filing of a certificate of debt with
7 the Clerk of the Superior Court of New Jersey; provided, however,
8 that, except in the event of fraud, no person shall be liable for any
9 such refunds or deductions against future benefits unless so notified
10 before four years have elapsed from the time the benefits in
11 question were paid. Such person shall be promptly notified of the
12 determination and the reasons therefor. The determination
13 regarding the repayment of an overpayment shall be final unless the
14 person files an appeal of the determination within ~~seven~~ **seven** calendar
15 days after the delivery of the determination, or within 10 calendar
16 days after such notification was mailed to his last-known address,
17 for any determination made on or before December 1, 2010, and
18 any initial determination made pursuant to paragraph (1) of
19 subsection (b) of R.S.43:21-6 after December 1, 2010, or within 20
20 calendar days after the delivery of such determination, or within 20
21 calendar days after such notification was mailed to his last-known
22 address, for any determination other than an initial determination
23 made after December 1, 2010 **20** calendar days after a confirmed
24 receipt of a notice of the determination or 30 calendar days after the
25 notice was mailed to the last known address of the person.

26 (2) Interstate and cross-offset of state and federal unemployment
27 benefits. To the extent permissible under the laws and Constitution
28 of the United States, the commissioner is authorized to enter into or
29 cooperate in arrangements or reciprocal agreements with
30 appropriate and duly authorized agencies of other states or the
31 United States Secretary of Labor, or both, whereby:

32 (A) Overpayments of unemployment benefits as determined
33 under subsection (d) of R.S.43:21-16 shall be recovered by offset
34 from unemployment benefits otherwise payable under the
35 unemployment compensation law of another state, and
36 overpayments of unemployment benefits as determined under the
37 unemployment compensation law of another state shall be
38 recovered by offset from unemployment benefits otherwise payable
39 under R.S.43:21-1 et seq.; and

40 (B) Overpayments of unemployment benefits as determined
41 under applicable federal law, with respect to benefits or allowances
42 for unemployment provided under a federal program administered
43 by this State under an agreement with the United States Secretary of
44 Labor, shall be recovered by offset from unemployment benefits
45 otherwise payable under R.S.43:21-1 et seq., or any federal program
46 administered by this State, or under the unemployment
47 compensation law of another state or any federal unemployment
48 benefit or allowance program administered by another state under

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

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

41 (2) Any employing unit, officer or agent of the employing unit,
42 or any other person, who knowingly violates, or attempts to violate,
43 or advise another person to violate the transfer of employment
44 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
45 conviction before any Superior Court or municipal court, guilty of a
46 crime of the fourth degree. For the purposes of this subsection,
47 "knowingly" means having actual knowledge of, or acting with

1 deliberate ignorance or reckless disregard for the prohibition
2 involved.

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

14 (g) There shall be created in the Division of Unemployment and
15 Temporary Disability Insurance of the Department of Labor and
16 Workforce Development of the State of New Jersey an investigative
17 staff for the purpose of investigating violations referred to in this
18 section and enforcing the provisions thereof.

19 (h) An employing unit or any officer or agent of an employing
20 unit who makes a false statement or representation, knowing it to be
21 false, or who knowingly fails to disclose a material fact, to reduce
22 benefit charges to the employing unit pursuant to paragraph (1) of
23 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
24 be 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. The
28 fine when recovered shall be paid to the unemployment
29 compensation auxiliary fund for the use of the fund. Each false
30 statement or representation or failure to disclose a material fact, and
31 each day of that failure or refusal shall constitute a separate offense.
32 Any penalties imposed by this subsection shall be in addition to
33 those otherwise prescribed in R.S.43:21-1 et seq.

34 (i) The Department of Labor and Workforce Development shall
35 arrange for the electronic receipt of death record notifications from
36 the New Jersey Electronic Death Registration System, pursuant to
37 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a
38 verification system to confirm that benefits paid pursuant to the
39 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
40 et al.), and the "unemployment compensation law," R.S.43:21-1 et
41 seq., are not being paid to deceased individuals.

42 (j) The Department of Labor and Workforce Development shall
43 arrange for the electronic receipt of identifying information from
44 the Department of Corrections, pursuant to section 6 of P.L.1976,
45 c.98 (C.30:1B-6), and from the Administrative Office of the Courts
46 and any county which does not provide county inmate incarceration
47 information to the Administrative Office of the Courts, and
48 establish a verification system to confirm that benefits paid

1 pursuant to the "unemployment compensation law," R.S.43:21-1 et
2 seq., are not being paid to individuals who are incarcerated.

3 (cf: P.L.2013, c.274, s.5)

4

5 3. This act shall take effect on the 30th day following
6 enactment.

7

8

9

STATEMENT

10

11 This bill makes changes in the administration of unemployment
12 insurance (UI) benefits by the Division of Unemployment Insurance
13 to expedite the timely payment of benefits by:

14 1. Requiring the division to inform all employers of what
15 information they are required, at the time of any layoff, to provide
16 to the division to enable it to make timely benefit determinations,
17 and notify employers immediately of any failure to provide the
18 required information.

19 2. Permitting the division to request that claimants obtain
20 digital identity credentials, but only if the division provides
21 opportunities for claimants to verify their identities even if they do
22 not have the needed knowledge or access to the equipment to do so,
23 by informing claimants that they may use other means to verify
24 identification, including personal assistance in person or by phone
25 provided by the division as needed to prevent any delays in
26 processing claims.

27 3. Requiring that any system the division establishes for
28 claimants or recipients of benefits to verify identity, to apply for, or
29 to make appeals regarding, benefits, either by phone or on-line,
30 shall include a clearly and prominently expressed option for the
31 claimant or recipient to select from available appointment times an
32 appointment time to speak with a representative to obtain assistance
33 in verifying identity, filing a claim or appeal, or obtaining
34 information regarding the status of a claim or appeal.

35 4. Increasing the times in which various appeals may be made,
36 including increasing from 10 days to 21 days, the time within which
37 an appeal of an initial determination may be filed, and expressly
38 prohibits the filing of an appeal after the applicable time periods.

39 5. Requiring that benefits be paid according to the initial
40 determination during any appeal of the initial determination, but, to
41 the extent that the amount paid exceeds the amount determined in
42 the appeal, be regarded as an overpayment subject to the provisions
43 of R.S.43:21-16 regarding the repayment of overpayments.

44 6. Providing that, after an initial determination, the resolution
45 of any appeal of the initial determination, and the payment of one or
46 more weeks of benefits pursuant to the initial determination, if there
47 is any reduction or termination of those benefits, the claimant shall
48 be provided notification with a full written explanation of why the

1 reduction or termination of benefits will occur, and an opportunity
2 for the claimant appeal the reduction or termination during a seven-
3 day period after notification. If the claimant files an appeal,
4 benefits shall continue to be paid at the rate stipulated in the initial
5 determination until the appeal is resolved. If the claimant does not
6 file an appeal, or if the claimant appeals and it is found that the
7 amount in benefits paid during the appeal exceeded the amount
8 determined in the appeal to be correct, or the claimant is found to be
9 ineligible for benefits, any resulting excess payment of benefits
10 shall be regarded as an overpayment subject to the provisions of
11 R.S.43:21-16 regarding overpayments.

12 7. Making a claimant who receives benefits by reason of a
13 knowing, fraudulent nondisclosure or misrepresentation liable to
14 repay those benefits in full, but provides that a claimant is not liable
15 to repay any overpayment of benefits if the overpayment of benefits
16 was caused by errors, or failures to provide information by the
17 employer, or errors by the division, and not caused by an error, or
18 knowing, fraudulent nondisclosure or misrepresentation, made by
19 the claimant, and further provides that if the overpayments were
20 caused by both errors of the claimant and errors of the employer or
21 division, the claimant is liable for a portion of the overpayment not
22 exceeding 50 percent which is determined by the division taking
23 into consideration possible financial hardship, whether recovery
24 would be against equity and good conscience, and how much the
25 person's errors, compared to errors of the division or employer
26 contributed to the overpayment occurring.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 2357

STATE OF NEW JERSEY

DATED: MAY 9, 2022

The Senate Labor Committee reports favorably, a Senate Committee Substitute for Senate Bill, No. 2357.

This bill makes changes in the administration of unemployment insurance benefits by the Division of Unemployment Insurance to expedite the timely payment of benefits by:

1. Requiring the division to inform all employers of what information they are required, at the time of any separation of an employee from employment, to provide all of the information needed by the division to enable it to make timely benefit determinations.

2. Requiring employers to provide email addresses for communications to and from the division and use electronic communications to notify the division immediately of separations from employment, and provide the needed information.

3. If the information is incomplete, the division is required to notify the employer within seven days and request the additional needed information. If a claim is filed, but the employer has not provided any of the required information upon the separation from employment, the division is to request the information within seven days. If the employer does not reply to these requests, the division may use other sources, including employee affidavits, to make the benefit determination.

4. The division is required, as before, to make the initial determination within three weeks of the filing, but is not given an additional two weeks now permitted to request more information.

5. Penalties for not providing information apply to a failure to provide the information upon the separation from employment, as well as not responding to division requests. The current \$25 penalty for every 10 day period of failure to provide information requested in connection with filings is replaced by a penalty of \$500 per day.

6. Permitting the division to request that claimants obtain digital identity credentials, but only if the division provides opportunities for claimants to verify their identities even if they do not have the needed knowledge or access to the equipment to do so, by informing claimants that they may use other means to verify identification, including personal assistance in person or by phone provided by the division as needed to prevent any delays in processing claims.

7. Requiring that any system the division establishes for benefit claimants or recipients to verify identity, to apply for, or to make appeals regarding, benefits, either by phone or on-line, shall include a clearly and prominently expressed option for the claimant or recipient to select from available appointment times a time to speak with a representative to obtain assistance in verifying identity, filing a claim or appeal, or obtaining information regarding the status of a claim or appeal.

8. Increasing the times in which a claimant may appeal an initial benefit determination to 21 days, while leaving the time for employers at seven days, and expressly prohibiting the filing of an appeal of an initial benefit determination by either an employer or claimant after the applicable time periods. If an employer appeals the charging of benefits to the employer's account after the seven-day period to appeal the initial benefit determination, and, as a result of the appeal on the charging to the employer's account, the division reduces the amount charged to the employer's account, any resulting reduction in the amount of benefits shall take effect only after the resolution of the appeal of the charging, and any amount of benefits paid before the resolution of that appeal which exceeds the amount determined in that appeal shall be regarded as an overpayment caused by employer error and be charged to the employer's account, and the claimant shall not be liable to repay any portion of that overpayment.

9. Requiring that benefits be paid according to the initial determination during any appeal of the initial determination, but, to the extent that the amount paid exceeds the amount determined in the appeal, be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding the repayment of overpayments.

10. Providing that, after an initial determination, the resolution of any appeal of the initial determination, and the payment of one or more weeks of benefits pursuant to the initial determination, if there is any reduction or termination of those benefits, the claimant shall be provided notification with a full written explanation of why the reduction or termination of benefits will occur, and an opportunity to appeal the reduction or termination during a seven-day period after notification. If the claimant files an appeal, benefits shall continue to be paid at the rate stipulated in the initial determination until the appeal is resolved. If the claimant does not file an appeal, or if the claimant appeals and it is found that the amount in benefits paid during the appeal exceeded the amount determined in the appeal to be correct, or the claimant is found to be ineligible for benefits, any resulting excess payment of benefits shall be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding overpayments.

11. Making a claimant who receives benefits by reason of a knowing, fraudulent nondisclosure or misrepresentation liable to repay those benefits in full, but providing that a claimant is not liable to repay any overpayment of benefits if the overpayment was caused by

errors, or failures to provide information by the employer or the division, and not caused by an error, or knowing, fraudulent nondisclosure or misrepresentation, made by the claimant, and further provides that if the overpayments were caused by both errors of the claimant and errors of the employer or division, the claimant is liable for a portion of the overpayment not exceeding 50 percent which is determined by the division taking into consideration possible financial hardship, whether recovery would be against equity and good conscience, and how much the person's errors, compared to errors of the division or employer, contributed to the overpayment occurring. These provisions regarding waivers of recovery of some or all of overpayment do not apply to federally-funded unemployment benefits provided under the Coronavirus Aid, Relief, and Economic Security Act.

12. The effective date is changed to 120 days after enactment to give the division time to change forms and materials provided to employers and make all employers aware of the changes in procedures.

ASSEMBLY, No. 3830

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 2, 2022

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman SHAMA A. HAIDER

District 37 (Bergen)

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblywomen Piperno, Eulner and Assemblyman Wimberly

SYNOPSIS

Concerns timely payment of UI benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/19/2022)

A3830 MORIARTY, HAIDER

2

1 AN ACT concerning the timely payment of unemployment
2 compensation benefits and amending R.S.43:21-6 and R.S.43:21-
3 16.

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, and directions
29 provided in advance to all employers regarding what information
30 the division requires employers to provide upon a termination of
31 employment to enable the division to make a benefit determination,
32 including information relevant to whether the individual may be
33 disqualified pursuant to subsections (a),(b),(d), or (e) of R.S.43:21-
34 5, shall be supplied by the division to employers without cost to
35 them. When an employer provides benefit instructions to the
36 individual which disclose the date on which unemployment will
37 commence, the employer shall simultaneously provide that
38 disclosure to the division together with information required by the
39 division pursuant to the directions provided in advance by the
40 division. The division shall notify the employer immediately of any
41 failure of the employer to provide information needed by the
42 division to make a benefit determination. Nothing in this section
43 shall be construed so as to require an employer to re-hire an
44 individual formerly in the employer's service.

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 (2) Any claimant may choose to certify, cancel or close his
2 claim for unemployment insurance benefits at any time, 24 hours a
3 day and seven days a week, via the Internet on a website developed
4 by the division; however, any claim that is certified, cancelled or
5 closed after 7:00 PM will not be processed by the division until the
6 next scheduled posting date.

7 (3) The division may request that claimants obtain digital
8 identity credentials, but only if the division provides opportunities
9 for claimants to verify their identities even if they do not have the
10 knowledge or access to the equipment needed to obtain the digital
11 identity credentials. Any request by the division for a claimant to
12 obtain digital identity credentials shall include a statement that the
13 claimant may use other means to verify identification, and fully
14 describe the other means, which shall include personal assistance in
15 person or by phone which shall be made available by
16 representatives of the division as needed to prevent any delays in
17 processing claims.

18 (4) Any system that the division establishes for claimants or
19 recipients of benefits to verify identity, to apply for, or to make
20 appeals regarding, benefits either by phone or on-line, shall provide
21 a clearly and prominently expressed option for the claimant or
22 recipient to select from available appointment times an appointment
23 time to speak with a representative to obtain assistance in verifying
24 identity, filing a claim or appeal, or obtaining information regarding
25 the status of a claim or appeal.

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

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

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

40 If any employer or employing unit fails to respond to the request
41 information within 10 days after the mailing, or communicating by
42 electronic means, of such request

43 If any employer or employing unit fails to respond to **【the】** a
44 request by the division for required information the employer failed
45 to provide, or for additional needed information, within 10 days
46 after **【the】** a mailing, or **【communicating】** a communication by
47 electronic means, of **【such】** the request, the deputy shall rely
48 entirely on information from other sources, including an affidavit to

1 the best of the knowledge and belief of the claimant with respect to
2 his wages and time worked. Except in the event of **【fraud】** a
3 knowing, fraudulent nondisclosure or misrepresentation by the
4 claimant or his agent, if it is determined that any information in
5 such affidavit is erroneous, no penalty shall be imposed on the
6 claimant.

7 The deputy shall make an initial determination contingent upon
8 the receipt of all necessary information and notify the claimant no
9 later than three weeks from the date on which the division received
10 the claim for benefits**【. If】**, except that, if an initial determination
11 cannot be made due to **【the lack of documentation, notification will**
12 **be sent to the claimant providing a status of the claim. The】** a
13 failure of the employer to provide the required information or other
14 information requested by the division, the division will then have an
15 additional two weeks to obtain the **【missing】** information needed to
16 make a determination, **【in order to】** including by means of a
17 claimant affidavit, and make the initial determination and advise the
18 claimant accordingly. The initial determination shall show the
19 weekly benefit amount payable, the maximum duration of benefits
20 with respect to the employer to whom the determination relates, and
21 the ratio of benefits chargeable to the employer's account for benefit
22 years commencing on or after July 1, 1986, and also shall show
23 whether the claimant is ineligible or disqualified for benefits under
24 the initial determination. The employer whose account may be
25 charged for benefits payable pursuant to said determination shall be
26 promptly notified thereof.

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

43 The deputy shall issue a separate initial benefit determination
44 with respect to each of the claimant's base year employers, starting
45 with the most recent employer and continuing as necessary in the
46 inverse chronological order of the claimant's last date of
47 employment with each such employer. If an appeal is taken from

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

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

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

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

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

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

19 Unless the claimant or any interested party, within seven
20 calendar days after **[delivery]** a confirmed receipt of notification of
21 an initial determination or within **[10]** 21 calendar days after
22 **[such]** the notification was mailed to **[his or]** their last-known
23 address and addresses, files an appeal from such decision, such
24 decision shall be final and benefits shall immediately be paid or
25 denied in accordance therewith, except for such determinations as
26 may be altered in benefit amounts or duration as provided in this
27 paragraph. An appeal concerning an initial determination may not
28 be filed after whichever is applicable of the seven-day or 21-day
29 period. Benefits payable for periods pending an appeal **[and not in**
30 **dispute]** shall be paid as such benefits accrue and be paid according
31 to the initial determination but shall be, to the extent that the
32 amount paid exceeds the amount determined in the appeal, regarded
33 as an overpayment subject to the provisions of R.S.43:21-16
34 regarding overpayments, including the requirement of that section
35 that a claimant who makes knowing, fraudulent nondisclosure or
36 misrepresentation is liable to repay the full amount of the
37 overpayment; provided that **[insofar as any such]** if the appeal is
38 **[or may be]** an appeal **[from]** of a determination **[to the effect]**
39 that the claimant is disqualified under the provisions of R.S.43:21-5
40 **[or any amendments thereof or supplements thereto]**, benefits
41 pending determination of the appeal shall be withheld only for the
42 period of disqualification as provided for in **[said]** that section, and
43 **[notwithstanding such]** while the appeal is pending, the benefits
44 otherwise provided by this act shall be paid for the period
45 subsequent to such period of disqualification; provided further that
46 if it is determined in the appeal that the claimant was not
47 disqualified, the claimant shall be paid the benefits due for the

1 period of the disqualification; and provided, also, that if there are
2 two determinations of entitlement, benefits for the period covered
3 by such determinations shall be paid regardless of any appeal which
4 may thereafter be taken, but no employer's account shall be charged
5 with benefits so paid, if the decision is finally reversed.

6 (2) **【**Procedure for making initial determinations in certain cases
7 of concurrent employment, with respect to benefit years
8 commencing on or after January 1, 1953 and prior to benefit years
9 commencing on or after July 1, 1986.

10 Notwithstanding any other provisions of this Title, if an
11 individual shows to the satisfaction of the deputy that there were at
12 least 13 weeks in his base period in each of which he earned wages
13 from two or more employers totaling \$30.00 or more but in each of
14 which there was no single employer from whom he earned as much
15 as \$100.00, then such individual's claim shall be determined in
16 accordance with the special provisions of this paragraph. In such
17 case, the deputy shall determine the individual's eligibility for
18 benefits, his average weekly wage, weekly benefit rate and
19 maximum total benefits as if all his base year employers were a
20 single employer. Such determination shall apportion the liability
21 for benefit charges thereunder to the individual's several base year
22 employers so that each employer's maximum liability for charges
23 thereunder bears approximately the same relation to the maximum
24 total benefits allowed as the wages earned by the individual from
25 each employer during the base year bears to his total wages earned
26 from all employers during the base year. Such initial determination
27 shall also specify the individual's last date of employment within
28 the base year with respect to each base year employer, and such
29 employers shall be charged for benefits paid under said initial
30 determination in the inverse chronological order of such last date of
31 employment.】 (Deleted by amendment, P.L. _____, c. _____) (now
32 pending before the Legislature as this bill)

33 (3) Procedure for making subsequent determinations with
34 respect to benefit years commencing on or after January 1, 1953.
35 The deputy shall make determinations with respect to claims for
36 benefits thereafter in the course of the benefit year, in accordance
37 with any initial determination allowing benefits, and under which
38 benefits have not been exhausted, and each notification of a benefit
39 payment shall be a notification of an affirmative subsequent
40 determination. **【The】** Any change in the allowance, amount, or
41 other characteristic of benefits by the deputy **【on】** in any such
42 determination, or the denial of benefits by the deputy **【on】** in any
43 such determination, shall be appealable in the same manner and
44 under the same limitations as is provided in the case of initial
45 determinations. After an initial determination, the resolution of any
46 appeal of the initial determination, and the payment of one or more
47 weeks of benefits pursuant to the initial determination, if a

1 subsequent determination will result in any reduction or termination
2 of those benefits, the claimant shall be provided notification with a
3 full written explanation of why the reduction or termination of
4 benefits will occur, and provided, during the seven calendar days
5 following the notification, an opportunity to file an appeal before
6 the reduction or termination goes into effect. If the claimant files
7 an appeal during the seven-day period, benefits shall continue to be
8 paid at the rate stipulated in the initial determination until the
9 appeal is resolved. If the claimant does not file an appeal, or the
10 claimant files an appeal and it is found in the resolution of the
11 appeal that the amount in benefits paid during the processing of the
12 appeal exceeded the amount determined in the appeal to be correct,
13 or the claimant is found in the appeal to be ineligible for benefits,
14 any resulting excess payment of benefits shall be regarded as an
15 overpayment subject to the provisions of R.S.43:21-16 regarding
16 overpayments, including the requirement of that section that a
17 claimant who makes knowing, fraudulent nondisclosure or
18 misrepresentation is liable to repay the full amount of the
19 overpayment.

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

31 (d) Appeal tribunals. To hear and decide disputed benefit
32 claims, including appeals from determinations with respect to
33 demands for refunds of benefits under subsection (d) of R.S.43:21-
34 16, the director with the approval of the Commissioner of Labor and
35 Workforce Development shall establish impartial appeal tribunals
36 consisting of a salaried body of examiners under the supervision of
37 a Chief Appeals Examiner, all of whom shall be appointed pursuant
38 to the provisions of Title 11A of the New Jersey Statutes, Civil
39 Service and other applicable statutes.

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

1 to itself or transfer to another appeal tribunal the proceedings on
2 any claim pending before an appeal tribunal. Any proceedings so
3 removed to the board of review shall be heard by a quorum thereof
4 in accordance with the requirements of subsection (c) of this
5 section. The board of review shall promptly notify the interested
6 parties of its findings and decision.

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

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

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

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

1 (j) With respect to benefit payments made on or after October
2 22, 2013, an employer's account shall not be relieved of charges
3 related to a benefit payment that was made erroneously from the
4 division if it is determined that:

5 (1) The erroneous benefit payment was made because the
6 employer, or an agent of the employer, failed to respond in a timely
7 or adequate manner to a request from the division for information
8 related to the claim for benefits, in a manner consistent with the
9 provisions of R.S.43:21-6; and

10 (2) The employer, or an agent of the employer, has established a
11 pattern of failing to respond in a timely or adequate manner to
12 requests from the division for information related to claims for
13 benefits, in a manner consistent with the provisions of R.S.43:21-6.

14 Determinations of the division prohibiting the relief of charges
15 pursuant to this subsection shall be subject to appeal in the same
16 manner as other determinations of the division related to the
17 charging of employer accounts.

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

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

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

34 (k) The Department of Labor and Workforce Development shall
35 establish and maintain a procedure by which personnel access rights
36 to the department's primary system for unemployment claims
37 receipt and processing are comprehensively reviewed every
38 calendar quarter. The procedure shall include an evaluation of
39 access needs to the primary unemployment claims receipt and
40 processing system for all department personnel and the adjustment,
41 addition, or deletion of access rights for department personnel based
42 on the quarterly review.

43 (cf: P.L.2017, c.163, s.1)

44

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

46 43:21-16. (a) (1) Whoever makes a false statement or
47 representation, knowing it to be false, or knowingly fails to disclose
48 a material fact, to obtain or increase or attempts to obtain or

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

19 (2) For purposes of any unemployment compensation program
20 of the United States, if the department determines that any benefit
21 amount is obtained by an individual due to fraud committed by the
22 individual, the department shall assess a fine on the individual and
23 deposit the recovered fine in the same manner as provided in
24 paragraph (1) of subsection (a) of this section. As used in this
25 paragraph, "unemployment compensation program of the United
26 States" means:

27 (A) Unemployment compensation for federal civilian employees
28 pursuant to 5 U.S.C. 8501 et seq.;

29 (B) Unemployment compensation for ex-service members
30 pursuant to 5 U.S.C. 8521 et seq.;

31 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-
32 2294;

33 (D) Disaster unemployment assistance pursuant to 42 U.S.C.
34 5177(a);

35 (E) Any federal temporary extension of unemployment
36 compensation;

37 (F) Any federal program that increases the weekly amount of
38 unemployment compensation payable to individuals; and

39 (G) Any other federal program providing for the payment of
40 unemployment compensation.

41 (b) (1) An employing unit or any officer or agent of an
42 employing unit or any other person who makes a false statement or
43 representation, knowing it to be false, or who knowingly fails to
44 disclose a material fact, to prevent or reduce the payment of
45 benefits to any individual entitled thereto or to avoid becoming or
46 remaining subject hereto or to avoid or reduce any contribution or
47 other payment required from an employing unit under this chapter
48 (R.S.43:21-1 et seq.), or under an employment security law of any

1 other state or of the federal government, or who willfully fails or
2 refuses to furnish any reports required hereunder (except for such
3 reports as may be required under subsection (b) of R.S.43:21-6) or
4 to produce or permit the inspection or copying of records, as
5 required hereunder, shall be liable to a fine of \$100.00, or 25% of
6 the amount fraudulently withheld, whichever is greater, to be
7 recovered in an action at law in the name of the Division of
8 Unemployment and Temporary Disability Insurance of the
9 Department of Labor and Workforce Development of the State of
10 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
11 fine when recovered to be paid to the unemployment compensation
12 auxiliary fund for the use of said fund; and each such false
13 statement or representation or failure to disclose a material fact, and
14 each day of such failure or refusal shall constitute a separate
15 offense. Any penalties imposed by this paragraph shall be in
16 addition to those otherwise prescribed in this chapter (R.S.43:21-1
17 et seq.).

18 (2) Any employing unit or any officer or agent of an employing
19 unit or any other person who fails to submit any report required
20 under subsection (b) of R.S.43:21-6 shall be subject to a penalty of
21 \$25.00 for the first report not submitted within 10 days after the
22 mailing of a request for such report, and an additional \$25.00
23 penalty may be assessed for the next 10-day period, which may
24 elapse after the end of the initial 10-day period and before the
25 report is filed; provided that when such report or reports are not
26 filed within the prescribed time but it is shown to the satisfaction of
27 the director that the failure was due to a reasonable cause, no such
28 penalty shall be imposed. Any penalties imposed by this paragraph
29 shall be recovered as provided in subsection (e) of R.S.43:21-14,
30 and when recovered shall be paid to the unemployment
31 compensation auxiliary fund for the use of said fund.

32 (3) Any employing unit, officer or agent of the employing unit,
33 or any other person, determined by the controller to have knowingly
34 violated, or attempted to violate, or advised another person to
35 violate the transfer of employment experience provisions found at
36 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain
37 a lower rate of contributions by failing to disclose material
38 information, or by making a false statement, or by a
39 misrepresentation of fact, shall be subject to a fine of \$5,000 or
40 25% of the contributions under-reported or attempted to be under-
41 reported, whichever is greater, to be recovered as provided in
42 subsection (e) of R.S.43:21-14, and when recovered to be paid to
43 the unemployment compensation auxiliary fund for the use of said
44 fund. For the purposes of this subsection, "knowingly" means
45 having actual knowledge of, or acting with deliberate ignorance or
46 reckless disregard for the prohibition involved.

47 (c) Any person who shall willfully violate any provision of this
48 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,

1 the violation of which is made unlawful or the observance of which
2 is required under the terms of this chapter (R.S.43:21-1 et seq.), and
3 for which a penalty is neither prescribed herein nor provided by any
4 other applicable statute, shall be liable to a fine of \$50.00, to be
5 recovered in an action at law in the name of the Division of
6 Unemployment and Temporary Disability Insurance of the
7 Department of Labor and Workforce Development of the State of
8 New Jersey or as provided in subsection (e) of R.S.43:21-14, said
9 fine when recovered to be paid to the unemployment compensation
10 auxiliary fund for the use of said fund; and each day such violation
11 continues shall be deemed to be a separate offense.

12 (d) (1) When it is determined by a representative or
13 representatives designated by the Director of the Division of
14 Unemployment and Temporary Disability Insurance of the
15 Department of Labor and Workforce Development of the State of
16 New Jersey that any person, **【whether (i)】** by reason of the
17 knowing, fraudulent nondisclosure or misrepresentation by him, or
18 by **【another】 anyone acting as his agent,** of a material fact
19 **【(whether or not such nondisclosure or misrepresentation was**
20 **known or fraudulent), or (ii) for any other reason】**, has received any
21 sum as benefits under this chapter (R.S.43:21-1 et seq.) while any
22 conditions for the receipt of benefits imposed by this chapter
23 (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was
24 disqualified from receiving benefits, or while otherwise not entitled
25 to receive such sum as benefits, such person, unless the director
26 (with the concurrence of the controller) directs otherwise by
27 regulation, shall be liable to repay those benefits in full. The person
28 shall not be liable to repay all or any portion of the overpayment if
29 the representative finds that the person received the overpayment of
30 benefits because of errors or failures to provide information by the
31 employer or errors by the division, and not because of an error, or
32 knowing, fraudulent nondisclosure or misrepresentation, by the
33 person. If the representative finds that errors made by the person
34 were a cause of the overpayment together with errors of the
35 division, or errors or failures to provide information by the
36 employer, but the person did not make a knowing, fraudulent
37 nondisclosure or misrepresentation, the representative shall
38 determine a portion of the overpayment for which the person is
39 liable taking into consideration possible financial hardship to the
40 person, whether recovery would be against equity and good
41 conscience, and how much the person's errors, compared to errors
42 of the division or employer, contributed to the overpayment
43 occurring, but the amount to which the person shall be liable shall
44 not exceed 50 percent of the overpayment. The employer's account
45 shall not be charged for the amount of an overpayment of benefits if
46 the overpayment was caused by an error of the division and not by
47 any error of the employer, but shall be charged if the overpayment
48 was caused by an error or failure to provide information of the

1 employer. The sum for which the person is found liable to repay
2 shall be deducted from any future benefits payable to the individual
3 under this chapter (R.S.43:21-1 et seq.) or shall be paid by the
4 individual to the division for the unemployment compensation fund,
5 and such sum shall be collectible in the manner provided for by law,
6 including, but not limited to, the filing of a certificate of debt with
7 the Clerk of the Superior Court of New Jersey; provided, however,
8 that, except in the event of fraud, no person shall be liable for any
9 such refunds or deductions against future benefits unless so notified
10 before four years have elapsed from the time the benefits in
11 question were paid. Such person shall be promptly notified of the
12 determination and the reasons therefor. The determination
13 regarding the repayment of an overpayment shall be final unless the
14 person files an appeal of the determination within ~~seven~~ **seven** calendar
15 days after the delivery of the determination, or within 10 calendar
16 days after such notification was mailed to his last-known address,
17 for any determination made on or before December 1, 2010, and
18 any initial determination made pursuant to paragraph (1) of
19 subsection (b) of R.S.43:21-6 after December 1, 2010, or within 20
20 calendar days after the delivery of such determination, or within 20
21 calendar days after such notification was mailed to his last-known
22 address, for any determination other than an initial determination
23 made after December 1, 2010 **20** calendar days after a confirmed
24 receipt of a notice of the determination or 30 calendar days after the
25 notice was mailed to the last known address of the person.

26 (2) Interstate and cross-offset of state and federal unemployment
27 benefits. To the extent permissible under the laws and Constitution
28 of the United States, the commissioner is authorized to enter into or
29 cooperate in arrangements or reciprocal agreements with
30 appropriate and duly authorized agencies of other states or the
31 United States Secretary of Labor, or both, whereby:

32 (A) Overpayments of unemployment benefits as determined
33 under subsection (d) of R.S.43:21-16 shall be recovered by offset
34 from unemployment benefits otherwise payable under the
35 unemployment compensation law of another state, and
36 overpayments of unemployment benefits as determined under the
37 unemployment compensation law of another state shall be
38 recovered by offset from unemployment benefits otherwise payable
39 under R.S.43:21-1 et seq.; and

40 (B) Overpayments of unemployment benefits as determined
41 under applicable federal law, with respect to benefits or allowances
42 for unemployment provided under a federal program administered
43 by this State under an agreement with the United States Secretary of
44 Labor, shall be recovered by offset from unemployment benefits
45 otherwise payable under R.S.43:21-1 et seq., or any federal program
46 administered by this State, or under the unemployment
47 compensation law of another state or any federal unemployment
48 benefit or allowance program administered by another state under

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

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

41 (2) Any employing unit, officer or agent of the employing unit,
42 or any other person, who knowingly violates, or attempts to violate,
43 or advise another person to violate the transfer of employment
44 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon
45 conviction before any Superior Court or municipal court, guilty of a
46 crime of the fourth degree. For the purposes of this subsection,
47 "knowingly" means having actual knowledge of, or acting with

1 deliberate ignorance or reckless disregard for the prohibition
2 involved.

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

14 (g) There shall be created in the Division of Unemployment and
15 Temporary Disability Insurance of the Department of Labor and
16 Workforce Development of the State of New Jersey an investigative
17 staff for the purpose of investigating violations referred to in this
18 section and enforcing the provisions thereof.

19 (h) An employing unit or any officer or agent of an employing
20 unit who makes a false statement or representation, knowing it to be
21 false, or who knowingly fails to disclose a material fact, to reduce
22 benefit charges to the employing unit pursuant to paragraph (1) of
23 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to
24 be 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. The
28 fine when recovered shall be paid to the unemployment
29 compensation auxiliary fund for the use of the fund. Each false
30 statement or representation or failure to disclose a material fact, and
31 each day of that failure or refusal shall constitute a separate offense.
32 Any penalties imposed by this subsection shall be in addition to
33 those otherwise prescribed in R.S.43:21-1 et seq.

34 (i) The Department of Labor and Workforce Development shall
35 arrange for the electronic receipt of death record notifications from
36 the New Jersey Electronic Death Registration System, pursuant to
37 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a
38 verification system to confirm that benefits paid pursuant to the
39 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
40 et al.), and the "unemployment compensation law," R.S.43:21-1 et
41 seq., are not being paid to deceased individuals.

42 (j) The Department of Labor and Workforce Development shall
43 arrange for the electronic receipt of identifying information from
44 the Department of Corrections, pursuant to section 6 of P.L.1976,
45 c.98 (C.30:1B-6), and from the Administrative Office of the Courts
46 and any county which does not provide county inmate incarceration
47 information to the Administrative Office of the Courts, and
48 establish a verification system to confirm that benefits paid

1 pursuant to the "unemployment compensation law," R.S.43:21-1 et
2 seq., are not being paid to individuals who are incarcerated.
3 (cf: P.L.2013, c.274, s.5)

4

5 3. This act shall take effect on the 30th day following
6 enactment.

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8

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STATEMENT

10

11 This bill makes changes in the administration of unemployment
12 insurance (UI) benefits by the Division of Unemployment Insurance
13 to expedite the timely payment of benefits by:

14 1. Requiring the division to inform all employers of what
15 information they are required, at the time of any layoff, to provide
16 to the division to enable it to make timely benefit determinations,
17 and notify employers immediately of any failure to provide the
18 required information.

19 2. Permitting the division to request that claimants obtain
20 digital identity credentials, but only if the division provides
21 opportunities for claimants to verify their identities even if they do
22 not have the needed knowledge or access to the equipment to do so,
23 by informing claimants that they may use other means to verify
24 identification, including personal assistance in person or by phone
25 provided by the division as needed to prevent any delays in
26 processing claims.

27 3. Requiring that any system the division establishes for
28 claimants or recipients of benefits to verify identity, to apply for, or
29 to make appeals regarding, benefits, either by phone or on-line,
30 shall include a clearly and prominently expressed option for the
31 claimant or recipient to select from available appointment times an
32 appointment time to speak with a representative to obtain assistance
33 in verifying identity, filing a claim or appeal, or obtaining
34 information regarding the status of a claim or appeal.

35 4. Increasing the times in which various appeals may be made,
36 including increasing from 10 days to 21 days, the time within which
37 an appeal of an initial determination may be filed, and expressly
38 prohibits the filing of an appeal after the applicable time periods.

39 5. Requiring that benefits be paid according to the initial
40 determination during any appeal of the initial determination, but, to
41 the extent that the amount paid exceeds the amount determined in
42 the appeal, be regarded as an overpayment subject to the provisions
43 of R.S.43:21-16 regarding the repayment of overpayments.

44 6. Providing that, after an initial determination, the resolution
45 of any appeal of the initial determination, and the payment of one or
46 more weeks of benefits pursuant to the initial determination, if there
47 is any reduction or termination of those benefits, the claimant shall
48 be provided notification with a full written explanation of why the

1 reduction or termination of benefits will occur, and an opportunity
2 for the claimant appeal the reduction or termination during a seven-
3 day period after notification. If the claimant files an appeal,
4 benefits shall continue to be paid at the rate stipulated in the initial
5 determination until the appeal is resolved. If the claimant does not
6 file an appeal, or if the claimant appeals and it is found that the
7 amount in benefits paid during the appeal exceeded the amount
8 determined in the appeal to be correct, or the claimant is found to be
9 ineligible for benefits, any resulting excess payment of benefits
10 shall be regarded as an overpayment subject to the provisions of
11 R.S.43:21-16 regarding overpayments.

12 7. Making a claimant who receives benefits by reason of a
13 knowing, fraudulent nondisclosure or misrepresentation liable to
14 repay those benefits in full, but provides that a claimant is not liable
15 to repay any overpayment of benefits if the overpayment of benefits
16 was caused by errors, or failures to provide information by the
17 employer, or errors by the division, and not caused by an error, or
18 knowing, fraudulent nondisclosure or misrepresentation, made by
19 the claimant, and further provides that if the overpayments were
20 caused by both errors of the claimant and errors of the employer or
21 division, the claimant is liable for a portion of the overpayment not
22 exceeding 50 percent which is determined by the division taking
23 into consideration possible financial hardship, whether recovery
24 would be against equity and good conscience, and how much the
25 person's errors, compared to errors of the division or employer
26 contributed to the overpayment occurring.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3830

STATE OF NEW JERSEY

DATED: MAY 19, 2022

The Assembly Labor Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3830.

This bill makes changes in the administration of unemployment insurance benefits by the Division of Unemployment Insurance to expedite the timely payment of benefits by:

1. Requiring the division to inform all employers of what information they are required, at the time of any separation of an employee from employment, to provide all of the information needed by the division to enable it to make timely benefit determinations.

2. Requiring employers to provide email addresses for communications to and from the division and use electronic communications to notify the division immediately of separations from employment, and provide the needed information.

3. If the information is incomplete, the division is required to notify the employer within seven days and request the additional needed information. If a claim is filed, but the employer has not provided any of the required information upon the separation from employment, the division is to request the information within seven days. If the employer does not reply to these requests, the division may use other sources, including employee affidavits, to make the benefit determination.

4. The division is required, as before, to make the initial determination within three weeks of the filing, but is not given an additional two weeks now permitted to request more information.

5. Penalties for not providing information apply to a failure to provide the information upon the separation from employment, as well as not responding to division requests. The current \$25 penalty for every 10 day period of failure to provide information requested in connection with filings is replaced by a penalty of \$500 per day.

6. Permitting the division to request that claimants obtain digital identity credentials, but only if the division provides opportunities for claimants to verify their identities even if they do not have the needed knowledge or access to the equipment to do so, by informing claimants that they may use other means to verify identification, including personal assistance in person or by phone provided by the division as needed to prevent any delays in processing claims.

7. Requiring that any system the division establishes for benefit claimants or recipients to verify identity, to apply for, or to make appeals regarding, benefits, either by phone or on-line, shall include a clearly and prominently expressed option for the claimant or recipient to select from available appointment times a time to speak with a representative to obtain assistance in verifying identity, filing a claim or appeal, or obtaining information regarding the status of a claim or appeal.

8. Increasing the times in which a claimant may appeal an initial benefit determination to 21 days, while leaving the time for employers at seven days, and expressly prohibiting the filing of an appeal of an initial benefit determination by either an employer or claimant after the applicable time periods. If an employer appeals the charging of benefits to the employer's account after the seven-day period to appeal the initial benefit determination, and, as a result of the appeal on the charging to the employer's account, the division reduces the amount charged to the employer's account, any resulting reduction in the amount of benefits shall take effect only after the resolution of the appeal of the charging, and any amount of benefits paid before the resolution of that appeal which exceeds the amount determined in that appeal shall be regarded as an overpayment caused by employer error and be charged to the employer's account, and the claimant shall not be liable to repay any portion of that overpayment.

9. Requiring that benefits be paid according to the initial determination during any appeal of the initial determination, but, to the extent that the amount paid exceeds the amount determined in the appeal, be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding the repayment of overpayments.

10. Providing that, after an initial determination, the resolution of any appeal of the initial determination, and the payment of one or more weeks of benefits pursuant to the initial determination, if there is any reduction or termination of those benefits, the claimant shall be provided notification with a full written explanation of why the reduction or termination of benefits will occur, and an opportunity to appeal the reduction or termination during a seven-day period after notification. If the claimant files an appeal, benefits shall continue to be paid at the rate stipulated in the initial determination until the appeal is resolved. If the claimant does not file an appeal, or if the claimant appeals and it is found that the amount in benefits paid during the appeal exceeded the amount determined in the appeal to be correct, or the claimant is found to be ineligible for benefits, any resulting excess payment of benefits shall be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding overpayments.

11. Making a claimant who receives benefits by reason of a knowing, fraudulent nondisclosure or misrepresentation liable to repay those benefits in full, but providing that a claimant is not liable to repay any overpayment of benefits if the overpayment was caused by

errors, or failures to provide information by the employer or the division, and not caused by an error, or knowing, fraudulent nondisclosure or misrepresentation, made by the claimant, and further provides that if the overpayments were caused by both errors of the claimant and errors of the employer or division, the claimant is liable for a portion of the overpayment not exceeding 50 percent which is determined by the division taking into consideration possible financial hardship, whether recovery would be against equity and good conscience, and how much the person's errors, compared to errors of the division or employer, contributed to the overpayment occurring. These provisions regarding waivers of recovery of some or all of overpayment do not apply to federally-funded unemployment benefits provided under the Coronavirus Aid, Relief, and Economic Security Act.

12. The effective date is changed to 120 days after enactment to give the division time to change forms and materials provided to employers and make all employers aware of the changes in procedures.

This bill is identical to Senate Committee Substitute for Senate Bill, No. 2357 of the 2022-2023 session.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3830

STATE OF NEW JERSEY

DATED: JUNE 9, 2022

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 3830 (ACS).

This bill makes changes in the administration of unemployment insurance benefits by the Division of Unemployment Insurance to expedite the timely payment of benefits by:

1. Requiring the division to inform all employers of what information they are required, at the time of any separation of an employee from employment, to provide all of the information needed by the division to enable it to make timely benefit determinations.

2. Requiring employers to provide email addresses for communications to and from the division and use electronic communications to notify the division immediately of separations from employment, and provide the needed information.

3. If the information is incomplete, the division is required to notify the employer within seven days and request the additional needed information. If a claim is filed, but the employer has not provided any of the required information upon the separation from employment, the division is to request the information within seven days. If the employer does not reply to these requests, the division may use other sources, including employee affidavits, to make the benefit determination.

4. The division is required, as before, to make the initial determination within three weeks of the filing, but is not given an additional two weeks now permitted to request more information.

5. Penalties for not providing information apply to a failure to provide the information upon the separation from employment, as well as not responding to division requests. The current \$25 penalty for every 10 day period of failure to provide information requested in connection with filings is replaced by a penalty of \$500 per day.

6. Permitting the division to request that claimants obtain digital identity credentials, but only if the division provides opportunities for claimants to verify their identities even if they do not have the needed knowledge or access to the equipment to do so, by informing claimants that they may use other means to verify identification, including

personal assistance in person or by phone provided by the division as needed to prevent any delays in processing claims.

7. Requiring that any system the division establishes for benefit claimants or recipients to verify identity, to apply for, or to make appeals regarding, benefits, either by phone or on-line, shall include a clearly and prominently expressed option for the claimant or recipient to select from available appointment times a time to speak with a representative to obtain assistance in verifying identity, filing a claim or appeal, or obtaining information regarding the status of a claim or appeal.

8. Increasing the times in which a claimant may appeal an initial benefit determination to 21 days, while leaving the time for employers at seven days, and expressly prohibiting the filing of an appeal of an initial benefit determination by either an employer or claimant after the applicable time periods. If an employer appeals the charging of benefits to the employer's account after the seven-day period to appeal the initial benefit determination, and, as a result of the appeal on the charging to the employer's account, the division reduces the amount charged to the employer's account, any resulting reduction in the amount of benefits shall take effect only after the resolution of the appeal of the charging, and any amount of benefits paid before the resolution of that appeal which exceeds the amount determined in that appeal shall be regarded as an overpayment caused by employer error and be charged to the employer's account, and the claimant shall not be liable to repay any portion of that overpayment.

9. Requiring that benefits be paid according to the initial determination during any appeal of the initial determination, but, to the extent that the amount paid exceeds the amount determined in the appeal, be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding the repayment of overpayments.

10. Providing that, after an initial determination, the resolution of any appeal of the initial determination, and the payment of one or more weeks of benefits pursuant to the initial determination, if there is any reduction or termination of those benefits, the claimant shall be provided notification with a full written explanation of why the reduction or termination of benefits will occur, and an opportunity to appeal the reduction or termination during a seven-day period after notification. If the claimant files an appeal, benefits shall continue to be paid at the rate stipulated in the initial determination until the appeal is resolved. If the claimant does not file an appeal, or if the claimant appeals and it is found that the amount in benefits paid during the appeal exceeded the amount determined in the appeal to be correct, or the claimant is found to be ineligible for benefits, any resulting excess payment of benefits shall be regarded as an overpayment subject to the provisions of R.S.43:21-16 regarding overpayments.

11. Making a claimant who receives benefits by reason of a knowing, fraudulent nondisclosure or misrepresentation liable to repay

those benefits in full, but providing that a claimant is not liable to repay any overpayment of benefits if the overpayment was caused by errors, or failures to provide information by the employer or the division, and not caused by an error, or knowing, fraudulent nondisclosure or misrepresentation, made by the claimant, and further provides that if the overpayments were caused by both errors of the claimant and errors of the employer or division, the claimant is liable for a portion of the overpayment not exceeding 50 percent which is determined by the division taking into consideration possible financial hardship, whether recovery would be against equity and good conscience, and how much the person's errors, compared to errors of the division or employer, contributed to the overpayment occurring. These provisions regarding waivers of recovery of some or all of overpayment do not apply to federally-funded unemployment benefits provided under the Coronavirus Aid, Relief, and Economic Security Act.

12. The effective date is changed to 120 days after enactment to give the division time to change forms and materials provided to employers and make all employers aware of the changes in procedures.

Governor Murphy Takes Action on Legislation

09/22/2022

TRENTON – Today, Governor Murphy signed the following bills into law:

S-772/A-1929 (Pou, Pennacchio/Swain, Dancer, McKnight) - Directs Department of Agriculture to establish New Jersey Minority, Women, and Underserved Farmer Registry

S-1027/A-2208 (Singleton, Cruz-Perez/Greenwald, Verrelli, Sampson) - Includes duct cleaning as public work subject to the prevailing wage law

S-2253/A-3656 (Scutari, Pou/Stanley, McKnight, Benson) - Limits fees charged for copies of medical and billing records

The Governor vetoed the following bills:

S-757/S-2772 (Sarlo, Oroho/Freiman, Mukherji, Dancer) - CONDITIONAL - Authorizes special occasion events at certain commercial farms on preserved farmland, under certain conditions

[Copy of Statement](#)

SCS for S-2357/ACS for A-3830 (Madden, Lagana/Moriarty, Haider, Danielsen) - CONDITIONAL - Concerns timely payment of UI benefits

[Copy of Statement](#)

A-1474/S-511 (Lopez, Danielsen, Carter/Cryan) - CONDITIONAL - Provides certain protections and rights for temporary laborers.

[Copy of Statement](#)

September 22, 2022

**SENATE COMMITTEE SUBSTITUE FOR
SENATE BILL NO. 2357**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute of Senate Bill No. 2357 with my recommendations for reconsideration.

Senate Committee Substitute for Senate Bill No. 2357 makes certain changes to the administration of the State's unemployment insurance ("UI") system to increase the system's efficiency and expedite timely benefits payments. Among other things, the bill mandates enhanced information sharing among the Department of Labor and Workforce Development's Division of Unemployment and Temporary Disability Insurance ("the Division"), New Jersey employers, and claimants, requires that information be shared among the parties via electronic means, and imposes penalties on employers who fail to promptly provide the Division with the requisite information. The bill also modifies the process to appeal a benefit determination and specifies that a claimant whose benefit is reduced as a result of an appeal is not liable to repay the overpayment when the claimant is not at fault. Similarly, the bill requires a claimant to be paid any benefits withheld pending an appeal of a determination that a claimant is disqualified if the claimant is ultimately determined to be eligible to receive UI.

I commend the bill's sponsors for their dedication to improving our State's UI system. The revisions contained in the bill will promote a more expeditious review of unemployment claims and ensure a reliable and transparent process for all involved. In particular, the provisions protecting claimants from overpayment repayment will restore confidence that claimants

acting in good faith can rely on the Division's determinations and use their benefits without fear of a reversal.

However, I have been advised by the United States Department of Labor ("USDOL") that they have reviewed Senate Committee Substitute for Senate Bill No. 2357 for the purpose of determining conformity with federal unemployment compensation law and have identified multiple "conformity issues," where they believe the bill's provisions are inconsistent with federal law, including the Coronavirus Aid, Relief, and Economic Security ("CARES) Act. A State's unemployment compensation law must conform with the requirements of 20 C.F.R. § 604.6 for purposes of certification under (1) 26 U.S.C. § 3304(c) of the Federal Unemployment Tax Act with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by 26 U.S.C. § 3301, and (2) 42 U.S.C. § 502 of the Social Security Act with respect to whether a State is eligible to receive Federal grants for the administration of its unemployment compensation program.

Specifically, as to Senate Committee Substitute for Senate Bill No. 2357, the USDOL has identified as a conformity issue that certain employers may be unable to comply with the bill's provisions requiring information sharing via electronic means. USDOL has also identified as a conformity issue the bill's language regarding the release of claimants from liability to repay "any portion" of certain overpayments. The USDOL has advised that this language in the bill is inconsistent with language in the CARES Act permitting waivers of overpayment only if a state determines both that the overpayment was not the fault of the claimant and that requiring the claimant to pay back the overpayment would be contrary to equity and good conscience. See §§ 2102(d)(4), 2104(f)(2) and 2107(e)(2) of the CARES Act. Finally, USDOL has

which require employers to provide information to the division by electronic means, and the division to provide notifications to an employer by electronic means, the commissioner shall have the discretion to establish by rule an alternate method or methods for employers to provide the required information to the division and for the division to provide the required notifications to an employer in circumstances where it is established, to the satisfaction of the commissioner, that the employer is unable to provide the information to the division or is unable to receive notifications from the division by electronic means."

Page 6, Section 1, Line 38:

After "disqualification" insert ", except that no such benefits shall be paid to the claimant for any week during which the claimant has failed to provide to the division a weekly certification evidencing the claimant's eligibility for benefits"

Page 7, Section 1, Line 8:

After "overpayment" insert "where the overpayment is of regular Unemployment Compensation. In the case of the recovery of an overpayment of benefit under any of the following programs authorized by the federal "Coronavirus Aid, Relief, and Economic Security (CARES) Act," Pub.L.116-136: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Mixed Earners Unemployment Compensation (MEUC), Pandemic Unemployment Assistance (PUA), or the first week of regular Unemployment Compensation that is reimbursed in accordance with Section 2105 of the CARES Act, a recovery shall not be waived unless the division determines that the claimant is without fault and the repayment would be contrary to equity and good conscience"

Page 15, Section 2, Line 38:

Delete "(d)"

Page 15, Section 2, Line 39:

Delete "full"

Page 16, Section 2, Line 2:

Delete "or"

Page 16, Section 2, Line 3:

After "(PUA)" insert ", or the first week of regular Unemployment Compensation that is reimbursed in accordance with Section 2105 of the CARES Act"

Page 17, Section 3, Line 42:

Delete "120th" and insert "270th" in its place

Page 17, Section 3, Line 43:

Delete "120th" and insert "270th" in its place

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate McDonnell

Senior Deputy Chief Counsel to the Governor

SENATE COMMITTEE SUBSTITUE FOR
SENATE BILL NO. 2357

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute of Senate Bill No. 2357 with my recommendations for reconsideration.

Senate Committee Substitute for Senate Bill No. 2357 makes certain changes to the administration of the State's unemployment insurance ("UI") system to increase the system's efficiency and expedite timely benefits payments. Among other things, the bill mandates enhanced information sharing among the Department of Labor and Workforce Development's Division of Unemployment and Temporary Disability Insurance ("the Division"), New Jersey employers, and claimants, requires that information be shared among the parties via electronic means, and imposes penalties on employers who fail to promptly provide the Division with the requisite information. The bill also modifies the process to appeal a benefit determination and specifies that a claimant whose benefit is reduced as a result of an appeal is not liable to repay the overpayment when the claimant is not at fault. Similarly, the bill requires a claimant to be paid any benefits withheld pending an appeal of a determination that a claimant is disqualified if the claimant is ultimately determined to be eligible to receive UI.

I commend the bill's sponsors for their dedication to improving our State's UI system. The revisions contained in the bill will promote a more expeditious review of unemployment claims and ensure a reliable and transparent process for all involved. In particular, the provisions protecting claimants from overpayment repayment will restore confidence that claimants

acting in good faith can rely on the Division's determinations and use their benefits without fear of a reversal.

However, I have been advised by the United States Department of Labor ("USDOL") that they have reviewed Senate Committee Substitute for Senate Bill No. 2357 for the purpose of determining conformity with federal unemployment compensation law and have identified multiple "conformity issues," where they believe the bill's provisions are inconsistent with federal law, including the Coronavirus Aid, Relief, and Economic Security ("CARES) Act. A State's unemployment compensation law must conform with the requirements of 20 C.F.R. § 604.6 for purposes of certification under (1) 26 U.S.C. § 3304(c) of the Federal Unemployment Tax Act with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by 26 U.S.C. § 3301, and (2) 42 U.S.C. § 502 of the Social Security Act with respect to whether a State is eligible to receive Federal grants for the administration of its unemployment compensation program.

Specifically, as to Senate Committee Substitute for Senate Bill No. 2357, the USDOL has identified as a conformity issue that certain employers may be unable to comply with the bill's provisions requiring information sharing via electronic means. USDOL has also identified as a conformity issue the bill's language regarding the release of claimants from liability to repay "any portion" of certain overpayments. The USDOL has advised that this language in the bill is inconsistent with language in the CARES Act permitting waivers of overpayment only if a state determines both that the overpayment was not the fault of the claimant and that requiring the claimant to pay back the overpayment would be contrary to equity and good conscience. See §§ 2102(d)(4), 2104(f)(2) and 2107(e)(2) of the CARES Act. Finally, USDOL has cautioned that, under federal law and regulations, benefits may not be paid for an overturned period of disqualification without

weekly certifications from the claimant for the applicable period evidencing the claimant's eligibility. See 20 C.F.R. § 604.3(a) (A State may pay unemployment compensation only to an individual who is able to work and available for work for the week for which unemployment compensation is claimed).

Accordingly, I am recommending minor revisions to Senate Committee Substitute for Senate Bill No. 2357 to address the concerns raised by USDOL and ensure that benefits are paid in conformity with federal law. These revisions authorize the Division to permit an employer to communicate information with the Division by methods other than electronic communication in those limited circumstances where an employer has demonstrated an inability to communicate electronically. My recommended changes also clarify that overpayments paid under federal CARES Act programs may only be waived if the Division determines that both (1) the overpayment was not the fault of the claimant and (2) repayment would be contrary to equity and good conscience. Finally, my revisions specify that benefits may not be paid to a claimant for any week during which the claimant has failed to provide to the division a weekly certification evidencing the claimant's eligibility for benefits.

In addition to the changes I am recommending at the request of the USDOL, my revisions also give the Division additional time to implement the law in order to ensure a seamless transition to the enhanced system.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 2357 and recommend that it be amended as follows:

Page 3, Section 1, Line 11:

After "employer." insert "Notwithstanding the provisions of this section which require employers to provide information to the division by electronic means, and the division to provide notifications to an employer by electronic means, the commissioner shall have the discretion to establish by

rule an alternate method or methods for employers to provide the required information to the division and for the division to provide the required notifications to an employer in circumstances where it is established, to the satisfaction of the commissioner, that the employer is unable to provide the information to the division or is unable to receive notifications from the division by electronic means."

Page 6, Section 1, Line 38:

After "disqualification" insert ", except that no such benefits shall be paid to the claimant for any week during which the claimant has failed to provide to the division a weekly certification evidencing the claimant's eligibility for benefits"

Page 7, Section 1, Line 8:

After "overpayment" insert "where the overpayment is of regular Unemployment Compensation. In the case of the recovery of an overpayment of benefit under any of the following programs authorized by the federal "Coronavirus Aid, Relief, and Economic Security (CARES) Act," Pub.L.116-136: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Mixed Earners Unemployment Compensation (MEUC), Pandemic Unemployment Assistance (PUA), or the first week of regular Unemployment Compensation that is reimbursed in accordance with Section 2105 of the CARES Act, a recovery shall not be waived unless the division determines that the claimant is without fault and the repayment would be contrary to equity and good conscience"

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[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate McDonnell

Senior Deputy Chief Counsel to the Governor