

P.L.2010, CHAPTER 82, *approved October 27, 2010*  
Senate, No. 1968 (*Third Reprint*)

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

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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

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

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

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

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

35 If any employer or employing unit fails to respond to the request  
36 for information within 10 days after the mailing, or communicating

**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:**

<sup>1</sup>Senate SLA committee amendments adopted May 27, 2010.

<sup>2</sup>Assembly ALA committee amendments adopted June 14, 2010.

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

1 by electronic means, of such request, the deputy shall rely entirely  
2 on information from other sources, including an affidavit to the best  
3 of the knowledge and belief of the claimant with respect to his  
4 wages and time worked. Except in the event of fraud, if it is  
5 determined that any information in such affidavit is erroneous, no  
6 penalty <sup>3</sup>[, or refund liability for resulting benefit overpayments  
7 prior to the receipt of the employer's reply.]<sup>3</sup> shall be imposed on  
8 the claimant.

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

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

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

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

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

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

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

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

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

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

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

1 total benefits allowed as the wages earned by the individual from  
2 each employer during the base year bears to his total wages earned  
3 from all employers during the base year. Such initial determination  
4 shall also specify the individual's last date of employment within  
5 the base year with respect to each base year employer, and such  
6 employers shall be charged for benefits paid under said initial  
7 determination in the inverse chronological order of such last date of  
8 employment.

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

21 (c) Appeals. Unless such appeal is withdrawn, an appeal  
22 tribunal, after affording the parties reasonable opportunity for fair  
23 hearing, shall affirm or modify the findings of fact and the  
24 determination. The parties shall be duly notified of such tribunal's  
25 decision, together with its reasons therefor, which shall be deemed  
26 to be the final decision of the board of review, unless <sup>2</sup>further  
27 appeal is initiated pursuant to subsection (e) of this section within  
28 10 days after the date of notification or mailing of the decision for  
29 any decision made on or before December 1, 2010, or<sup>2</sup> within [10]  
30 20 days after the date of notification or mailing of such decision <sup>2</sup>[,  
31 further appeal is initiated pursuant to subsection (e) of this section]  
32 for any decision made after December 1, 2010<sup>2</sup>.

33 (d) Appeal tribunals. To hear and decide disputed benefit  
34 claims, including appeals from determinations with respect to  
35 demands for refunds of benefits under [section 43:21-16(d) of this  
36 chapter (R.S.43:21-1 et seq.)] subsection d. of R.S.43:21-16, the  
37 director with the approval of the Commissioner of Labor <sup>1</sup>and  
38 Workforce Development<sup>1</sup> shall establish impartial appeal tribunals  
39 consisting of a salaried body of examiners under the supervision of  
40 a Chief Appeals Examiner, all of whom shall be appointed pursuant  
41 to the provisions of Title <sup>1</sup>[11] 11A<sup>1</sup> of the <sup>1</sup>[Revised] New  
42 Jersey<sup>1</sup> Statutes, Civil Service and other applicable statutes.

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

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

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

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

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

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

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

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

7

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

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

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

1 addition to those otherwise prescribed in this chapter (R.S.43:21-1  
2 et seq.).

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

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

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

45 (d) (1) When it is determined by a representative or  
46 representatives designated by the Director of the Division of  
47 Unemployment and Temporary Disability Insurance of the  
48 Department of Labor and Workforce Development of the State of

1 New Jersey that any person, ~~whether (i)~~ <sup>3</sup>whether (i)<sup>3</sup> by reason  
2 of the ~~fraudulent or knowing~~<sup>3</sup> nondisclosure or  
3 misrepresentation by him or by another of a material fact [(whether  
4 or not such nondisclosure or misrepresentation was known or  
5 fraudulent), or (ii) for any other reason] <sup>3</sup>(whether or not such  
6 nondisclosure or misrepresentation was known or fraudulent), or (ii)  
7 for any other reason<sup>3</sup>, has received any sum as benefits under this  
8 chapter (R.S.43:21-1 et seq.) while any conditions for the receipt of  
9 benefits imposed by this chapter (R.S.43:21-1 et seq.) were not  
10 fulfilled in his case, or while he was disqualified from receiving  
11 benefits, or while otherwise not entitled to receive such sum as  
12 benefits, such person, unless the director (with the concurrence of  
13 the controller) directs otherwise by regulation, shall be liable to  
14 repay those benefits in full. <sup>3</sup>If the representative finds that the  
15 person received an overpayment of benefits for any reason other  
16 than fraudulent or knowing nondisclosure or misrepresentation or  
17 because the person has been found, after a prior determination, to  
18 have become ineligible for part or all of the benefits, the person  
19 shall not be liable for any overpayment which occurred before the  
20 finding of the overpayment.<sup>3</sup> <sup>2</sup>The employer's account shall not  
21 be charged for the amount of an overpayment of benefits if the  
22 overpayment was caused by an error of the division and not by any  
23 error of the employer.<sup>2</sup> The sum shall be deducted from any future  
24 benefits payable to the individual under this chapter (R.S.43:21-1 et  
25 seq.) or shall be paid by the individual to the division for the  
26 unemployment compensation fund, and such sum shall be  
27 collectible in the manner provided for by law, including, but not  
28 limited to, the filing of a certificate of debt with the Clerk of the  
29 Superior Court of New Jersey; provided, however, that, except in  
30 the event of fraud, no person shall be liable for any such refunds or  
31 deductions against future benefits unless so notified before four  
32 years have elapsed from the time the benefits in question were paid.  
33 Such person shall be promptly notified of the determination and the  
34 reasons therefor. <sup>2</sup>[Unless such person,] The determination shall be  
35 final unless the person files an appeal of the determination within  
36 seven calendar days after the delivery of the determination, or  
37 within 10 calendar days after such notification was mailed to his  
38 last-known address, for any determination made on or before  
39 December 1, 2010, and any initial determination made pursuant to  
40 paragraph (1) of subsection (b) of R.S.43:21-6 after December 1,  
41 2010, or<sup>2</sup> within <sup>1</sup>~~seven~~ <sup>20</sup>calendar days after the delivery of  
42 such determination, or within ~~10~~ <sup>20</sup>calendar days after such  
43 notification was mailed to his last-known address, <sup>2</sup>[files an appeal  
44 from such determination, such determination shall be final] for any  
45 determination other than an initial determination made after  
46 December 1, 2010<sup>2</sup>.



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

7 (A) Overpayments of unemployment benefits as determined  
8 under subsection (d) of R.S.43:21-16 shall be recovered by offset  
9 from unemployment benefits otherwise payable under the  
10 unemployment compensation law of another state, and  
11 overpayments of unemployment benefits as determined under the  
12 unemployment compensation law of another state shall be  
13 recovered by offset from unemployment benefits otherwise payable  
14 under R.S.43:21-1 et seq.; and

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

38 (e) (1) Any employing unit, or any officer or agent of an  
39 employing unit, which officer or agent is directly or indirectly  
40 responsible for collecting, truthfully accounting for, remitting when  
41 payable any contribution, or filing or causing to be filed any report  
42 or statement required by this chapter, or employer, or person failing  
43 to remit, when payable, any employer contributions, or worker  
44 contributions (if withheld or deducted), or the amount of such  
45 worker contributions (if not withheld or deducted), or filing or  
46 causing to be filed with the controller or the Division of  
47 Unemployment and Temporary Disability Insurance of the  
48 Department of Labor and Workforce Development of the State of

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

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

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

36 (g) There shall be created in the Division of Unemployment and  
37 Temporary Disability Insurance of the Department of Labor and  
38 Workforce Development of the State of New Jersey an investigative  
39 staff for the purpose of investigating violations referred to in this  
40 section and enforcing the provisions thereof.

41 (h) An employing unit or any officer or agent of an employing  
42 unit who makes a false statement or representation, knowing it to be  
43 false, or who knowingly fails to disclose a material fact, to reduce  
44 benefit charges to the employing unit pursuant to paragraph (1) of  
45 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to  
46 be recovered in an action at law in the name of the Division of  
47 Unemployment and Temporary Disability Insurance of the  
48 Department of Labor and Workforce Development of the State of

1 New Jersey or as provided in subsection (e) of R.S.43:21-14. The  
2 fine when recovered shall be paid to the unemployment  
3 compensation auxiliary fund for the use of the fund. Each false  
4 statement or representation or failure to disclose a material fact, and  
5 each day of that failure or refusal shall constitute a separate offense.  
6 Any penalties imposed by this subsection shall be in addition to  
7 those otherwise prescribed in R.S.43:21-1 et seq.  
8 (cf: P.L.2005, c.239, s.4)

9  
10 3. (New section) a. An authorized agent who represents  
11 parties for a fee shall not represent any party after <sup>1</sup>[June 30, 2011]  
12 December 1, 2010<sup>1</sup> in any procedure with the division regarding  
13 claims for unemployment benefits or any obligations of employers  
14 regarding charges or taxes for unemployment compensation,  
15 including any filing of information, or any appeal, hearing, or other  
16 proceeding regarding unemployment benefit claims, charges or  
17 taxes before any representative of the division, unless the  
18 authorized agent is registered with the division pursuant to this  
19 section.

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

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

1 registration number of the organization or business shall be  
2 provided.

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

5

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

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

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

24

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

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

43 c. In the event that the client or agent does not appear at a  
44 scheduled hearing without requesting a postponement, or that a  
45 postponement request is made but properly denied and the agent or  
46 the client does not appear, no further hearings will be scheduled at  
47 the request of the client or agent<sup>2</sup>, unless the client or agent can  
48 demonstrate to the satisfaction of a representative of the division

1 that the failure to appear was due to circumstances beyond the  
2 control of the client or agent<sup>2</sup>.

3  
4 6. (New section) a. An authorized agent shall provide  
5 competent representation to each party that is a client of the agent.  
6 The authorized agent shall explain the proceedings and prepare the  
7 case with the client and any witnesses before any division hearing is  
8 called, shall be acquainted with the facts and legal issues involved,  
9 and shall arrange for producing witnesses and documentary  
10 evidence at the hearing.

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

13 c. An authorized agent seeking to inspect or review a case file  
14 may do so prior to the date of the hearing. If it is necessary for the  
15 authorized agent to review the file on the day of the hearing, the  
16 authorized agent shall make arrangements with the division in  
17 advance of the scheduled hearing time.

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

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

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

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

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

42 d. Refer at a hearing to a matter which the authorized agent  
43 does not reasonably believe is relevant or is not supported by  
44 evidence;

45 e. Seek to improperly influence any representative of the  
46 division; or

1 f. Engage in any ex parte communication with any  
2 representative of the division concerning the merits of any pending  
3 appeal unless all other parties have waived their right to participate.  
4

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

15 b. If, at the conclusion of a monitoring period of not more than  
16 12 months after the first determination, the commissioner  
17 determines that the agent has continued the pattern of repeated  
18 violations of the provisions, the commissioner:

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

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

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

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

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

14  
15 9. (New section) For the purposes of sections 3 through 9 of  
16 this act:

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

35 “Party” means any of the following parties to an appeal, hearing  
36 or other procedure of the division: the division; a claimant for  
37 unemployment compensation; or any employer against whom  
38 charges may be made or tax liability may be assessed due to the  
39 claim for unemployment compensation.

40 “Representative of the division” means any individual or entity,  
41 including any deputy, appeal tribunal, the board of review or any  
42 other individual or entity which represents the Division of  
43 Unemployment and Temporary Disability Insurance of the  
44 Department of Labor and Workforce Development in connection  
45 with claims, benefits, charges or taxes for unemployment  
46 compensation.

47  
48 10. This act shall take effect immediately.

**S1968 [3R]**

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