

[First Reprint]
SENATE, No. 1968

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MAY 20, 2010

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on May 27, 2010, with amendments.



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

3

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

6

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted May 27, 2010.

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

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

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

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

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

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

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

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

46 Unless the claimant or any interested party, within **[seven] 20**
47 calendar days after delivery of notification of an initial
48 determination or **[within 10 calendar days] ¹within 20 calendar**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40

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

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

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

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

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

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

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

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

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

1 has been found, after a prior determination, to have become
2 ineligible for part or all of the benefits, the person shall not be
3 liable for any overpayment which occurred before the finding of the
4 overpayment. The sum shall be deducted from any future benefits
5 payable to the individual under this chapter (R.S.43:21-1 et seq.) or
6 shall be paid by the individual to the division for the unemployment
7 compensation fund, and such sum shall be collectible in the manner
8 provided for by law, including, but not limited to, the filing of a
9 certificate of debt with the Clerk of the Superior Court of New
10 Jersey; provided, however, that, except in the event of fraud, no
11 person shall be liable for any such refunds or deductions against
12 future benefits unless so notified before four years have elapsed
13 from the time the benefits in question were paid. Such person shall
14 be promptly notified of the determination and the reasons therefor.
15 Unless such person, within ¹~~seven~~ 20¹ calendar days after the
16 delivery of such determination, or within ~~10~~ 20 calendar days
17 after such notification was mailed to his last-known address, files
18 an appeal from such determination, such determination shall be
19 final.

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

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

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

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

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

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

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

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

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

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

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

28

29 3. (New section) a. An authorized agent who represents
30 parties for a fee shall not represent any party after ¹**June 30, 2011**
31 December 1, 2010¹ in any procedure with the division regarding
32 claims for unemployment benefits or any obligations of employers
33 regarding charges or taxes for unemployment compensation,
34 including any filing of information, or any appeal, hearing, or other
35 proceeding regarding unemployment benefit claims, charges or
36 taxes before any representative of the division, unless the
37 authorized agent is registered with the division pursuant to this
38 section.

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

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

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

18

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

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

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

37

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8

9 10. This act shall take effect immediately.