



# House of Representatives

General Assembly

**File No. 58**

January Session, 2009

House Bill No. 6184

*House of Representatives, March 11, 2009*

The Committee on Labor and Public Employees reported through REP. RYAN of the 139th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT PRESERVING GOOD CAUSE FOR LATE FILING OF CERTAIN UNEMPLOYMENT COMPENSATION APPEALS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-249h of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 On or before January 1, [1988] 2011, the Employment Security Board  
4 of Review shall adopt regulations, in accordance with the provisions of  
5 chapter 54, which establish a definition of "good cause" for the  
6 timeliness of filing motions or appeals pursuant to sections 31-241, 31-  
7 248, [and] 31-249a and 31-273, as amended by this act. [Such  
8 regulations may be adopted by the board prior to January 1, 1988, but  
9 may not take effect prior to that date.]

10 Sec. 2. Section 31-273 of the general statutes is repealed and the  
11 following is substituted in lieu thereof (*Effective October 1, 2009*):

12 (a) Any person who, through error, has received any sum as

13 benefits under this chapter while any condition for the receipt of  
14 benefits imposed by this chapter was not fulfilled in his case, or has  
15 received a greater amount of benefits than was due him under this  
16 chapter, shall be charged with an overpayment of a sum equal to the  
17 amount so overpaid to him, provided such error has been discovered  
18 and brought to his attention within one year of the date of receipt of  
19 such benefits. A person whose receipt of such a sum was not due to  
20 fraud, wilful misrepresentation or wilful nondisclosure by himself or  
21 another shall be entitled to a hearing before an examiner designated by  
22 the administrator. Such examiner shall determine whether: [(A)] (1)  
23 Such person shall repay such sum to the administrator for the  
24 Unemployment Compensation Fund, [(B)] (2) such sum shall be  
25 recouped by offset from such person's unemployment benefits, or [(C)]  
26 (3) repayment or recoupment of such sum would defeat the purpose of  
27 the benefits or be against equity and good conscience and should be  
28 waived. In any case where the examiner determines that such sum  
29 shall be recouped by offset from a person's unemployment benefits,  
30 the deduction from benefits shall not exceed fifty per cent of the  
31 person's weekly benefit amount. Where such offset is insufficient to  
32 recoup the full amount of the overpayment, the claimant shall repay  
33 the remaining amount in accordance with a repayment schedule as  
34 determined by the examiner. If the claimant fails to repay according to  
35 the schedule, the administrator may recover such overpayment  
36 through a wage execution against the claimant's earnings upon his  
37 return to work in accordance with the provisions of section 52-361a.  
38 Any person with respect to whom a determination of overpayment has  
39 been made, according to the provisions of this subsection, shall be  
40 given notice of such determination and the provisions for repayment  
41 or recoupment of the amount overpaid. No repayment shall be  
42 required and no deduction from benefits shall be made until the  
43 determination of overpayment has become final. The determination of  
44 overpayment shall be final unless the claimant, within twenty-one  
45 days after notice of such determination was mailed to him at his last-  
46 known address, files an appeal from such determination to a referee,  
47 provided (A) any such appeal or motion that is filed after such twenty-

48 one-day period may be considered to be timely if the filing party  
49 shows good cause, as defined in regulations adopted pursuant to  
50 section 31-249h, as amended by this act, for the late filing, and (B) if the  
51 last day for filing an appeal or motion falls on any day when the offices  
52 of the Employment Security Division are not open for business, such  
53 last day shall be extended to the next business day. If any such appeal  
54 or motion is filed by mail, such appeal or motion shall be considered to  
55 be timely filed if it was received within such twenty-one-day period or  
56 bears a legible United States Postal Service postmark indicating that,  
57 within such twenty-one-day period, it was placed in the possession of  
58 such postal authorities for delivery to the appropriate office. Posting  
59 dates attributable to private postage meters shall not be considered in  
60 determining the timeliness of appeals or motions filed by mail. [If the  
61 last day for filing an appeal falls on any day when the offices of the  
62 Employment Security Division are not open for business, such last day  
63 shall be extended to the next business day.] The appeal shall be heard  
64 in the same manner provided in section 31-242 for an appeal from the  
65 decision of an examiner on a claim for benefits. Any party aggrieved  
66 by the decision of the referee, including the administrator, may appeal  
67 to the Employment Security Board of Review in the manner provided  
68 in section 31-249. Decisions of the board may be appealed to the  
69 Superior Court in the manner provided in section 31-249b. The  
70 administrator is authorized, eight years after the payment of any  
71 benefits described in this subsection, to cancel any claim for such  
72 repayment or recoupment which in his opinion is uncollectible.  
73 Effective January 1, 1996, and annually thereafter, the administrator  
74 shall report to the joint standing committee of the General Assembly  
75 having cognizance of matters relating to finance, revenue and bonding  
76 and the joint standing committee of the General Assembly having  
77 cognizance of matters relating to labor and public employees, the  
78 aggregate number and value of all such claims deemed uncollectible  
79 and therefore cancelled during the previous calendar year. Any  
80 determination of overpayment made under this section which becomes  
81 final may be enforced by a wage execution in the same manner as a  
82 judgment of the Superior Court when the claimant fails to pay

83 according to his repayment schedule. The court may issue a wage  
84 execution upon any final determination of overpayment in the same  
85 manner as in cases of judgments rendered in the Superior Court, and  
86 upon the filing of an application to the court for an execution, the  
87 administrator shall send to the clerk of the court a certified copy of  
88 such determination.

89 (b) (1) Any person who, by reason of fraud, wilful misrepresentation  
90 or wilful nondisclosure by such person or by another of a material fact,  
91 has received any sum as benefits under this chapter while any  
92 condition for the receipt of benefits imposed by this chapter was not  
93 fulfilled in such person's case, or has received a greater amount of  
94 benefits than was due such person under this chapter, shall be charged  
95 with an overpayment and shall be liable to repay to the administrator  
96 for the Unemployment Compensation Fund a sum equal to the  
97 amount so overpaid to such person. If such person does not make  
98 repayment in full of the sum overpaid, the administrator shall recoup  
99 such sum by offset from such person's unemployment benefits. The  
100 deduction from benefits shall be one hundred per cent of the person's  
101 weekly benefit entitlement until the full amount of the overpayment  
102 has been recouped. Where such offset is insufficient to recoup the full  
103 amount of the overpayment, the claimant shall repay the remaining  
104 amount plus, for any determination of an overpayment made on or  
105 after July 1, 2005, interest at the rate of one per cent of the amount so  
106 overpaid per month, in accordance with a repayment schedule as  
107 determined by the examiner. If the claimant fails to repay according to  
108 the schedule, the administrator may recover such overpayment plus  
109 interest through a wage execution against the claimant's earnings upon  
110 the claimant's return to work in accordance with the provisions of  
111 section 52-361a. In addition, the administrator may request the  
112 Commissioner of Administrative Services to seek reimbursement for  
113 such amount pursuant to section 12-742. The administrator is  
114 authorized, eight years after the payment of any benefits described in  
115 this subsection, to cancel any claim for such repayment or recoupment  
116 which in the administrator's opinion is uncollectible. Effective January  
117 1, 1996, and annually thereafter, the administrator shall report to the

118 joint standing committee of the General Assembly having cognizance  
119 of matters relating to finance, revenue and bonding and the joint  
120 standing committee of the General Assembly having cognizance of  
121 matters relating to labor and public employees, the aggregate number  
122 and value of all such claims deemed uncollectible and therefore  
123 cancelled during the previous calendar year.

124 (2) Any person who has made a claim for benefits under this  
125 chapter and has knowingly made a false statement or representation or  
126 has knowingly failed to disclose a material fact in order to obtain  
127 benefits or to increase the amount of benefits to which such person  
128 may be entitled under this chapter shall forfeit benefits for not less  
129 than one or more than thirty-nine compensable weeks following  
130 determination of such offense or offenses, during which weeks such  
131 person would otherwise have been eligible to receive benefits. For the  
132 purposes of section 31-231b, such person shall be deemed to have  
133 received benefits for such forfeited weeks. This penalty shall be in  
134 addition to any other applicable penalty under this section and in  
135 addition to the liability to repay any moneys so received by such  
136 person and shall not be confined to a single benefit year.

137 (3) Any person charged with the fraudulent receipt of benefits or the  
138 making of a fraudulent claim, as provided in this subsection, shall be  
139 entitled to a hearing before the administrator, or a deputy or  
140 representative designated by the administrator. Notice of the time and  
141 place of such hearing, and the reasons for such hearing, shall be given  
142 to the person not less than five days prior to the date appointed for  
143 such hearing. The administrator shall determine, on the basis of facts  
144 found by the administrator, whether or not a fraudulent act subject to  
145 the penalties of this subsection has been committed and, upon such  
146 finding, shall fix the penalty for any such offense according to the  
147 provisions of this subsection. Any person determined by the  
148 administrator to have committed fraud under the provisions of this  
149 section shall be liable for repayment to the administrator of the  
150 Unemployment Compensation Fund for any benefits determined by  
151 the administrator to have been collected fraudulently, as well as any

152 other penalties assessed by the administrator in accordance with the  
153 provisions of this subsection. Until such liabilities have been met to the  
154 satisfaction of the administrator, such person shall forfeit any right to  
155 receive benefits under the provisions of this chapter. Notification of  
156 such decision and penalty shall be mailed to such person's last known  
157 address and shall be final unless such person files an appeal not later  
158 than twenty-one days after the mailing date of such notification,  
159 provided (A) any such appeal or motion that is filed after such twenty-  
160 one-day period may be considered to be timely if the filing party  
161 shows good cause, as defined in regulations adopted pursuant to  
162 section 31-249h, as amended by this act, for the late filing, and (B) if the  
163 last day for filing an appeal or motion falls on any day when the offices  
164 of the Employment Security Division are not open for business, such  
165 last day shall be extended to the next business day. If any such appeal  
166 or motion is filed by mail, such appeal or motion shall be considered to  
167 be timely filed if it was received within such twenty-one-day period or  
168 bears a legible United States Postal Service postmark indicating that,  
169 within such twenty-one-day period, it was placed in the possession of  
170 such postal authorities for delivery to the appropriate office. Posting  
171 dates attributable to private postage meters shall not be considered in  
172 determining the timeliness of appeals or motions filed by mail. [If the  
173 last day for filing an appeal falls on any day when the offices of the  
174 Employment Security Division are not open for business, such last day  
175 shall be extended to the next business day.] Such appeal shall be heard  
176 by a referee in the same manner provided in section 31-242 for an  
177 appeal from the decision of an examiner on a claim for benefits. The  
178 manner in which such appeals shall be heard and appeals taken  
179 therefrom to the board of review and then to the Superior Court, either  
180 by the administrator or the claimant, shall be in accordance with the  
181 provisions set forth in section 31-249 or 31-249b, as the case may be.  
182 Any determination of overpayment made under this subsection which  
183 becomes final on or after October 1, 1995, may be enforced in the same  
184 manner as a judgment of the Superior Court when the claimant fails to  
185 pay according to the claimant's repayment schedule. The court may  
186 issue execution upon any final determination of overpayment in the

187 same manner as in cases of judgments rendered in the Superior Court;  
188 and upon the filing of an application to the court for an execution, the  
189 administrator shall send to the clerk of the court a certified copy of  
190 such determination.

191 (c) Any person, firm or corporation who knowingly employs a  
192 person and pays such employee without declaring such payment in  
193 the payroll records shall be guilty of a class A misdemeanor.

194 (d) If, after investigation, the administrator determines that there is  
195 probable cause to believe that the person, firm or corporation has  
196 wilfully failed to declare payment of wages in the payroll record, the  
197 administrator shall provide an opportunity for a hearing on the matter.  
198 If a hearing is requested, it shall be conducted by the administrator, or  
199 a deputy or representative designated by him. Notice of the time and  
200 place of such hearing, and the reasons therefor, shall be given to the  
201 person, firm, or corporation not less than five days prior to the date  
202 appointed for such hearing. If the administrator determines, on the  
203 basis of the facts found by him, that such nondeclaration occurred and  
204 was wilful, the administrator shall fix the payments and penalties in  
205 accordance with the provisions of subsection (e) of this section. Such  
206 person, firm or corporation may appeal to the superior court for the  
207 judicial district of Hartford or for the judicial district in which the  
208 employer's principal place of business is located. Such court shall give  
209 notice of a time and place of hearing to the administrator. At such  
210 hearing the court may confirm or correct the administrator's  
211 determination. If the administrator's determination is confirmed, the  
212 cost of such proceedings, as in civil actions, shall be assessed against  
213 such person, firm or corporation. No costs shall be assessed against the  
214 state on such appeal.

215 (e) If the administrator determines that any person, firm or  
216 corporation has wilfully failed to declare the payment of wages on  
217 payroll records, the administrator may impose a penalty of ten per  
218 cent of the total contributions past due to the administrator, as  
219 determined pursuant to section 31-270. Such penalty shall be in

220 addition to any other applicable penalty and interest under section 31-  
221 266. In addition, the administrator may require the person, firm or  
222 corporation to make contributions at the maximum rate provided in  
223 section 31-225a for a period of one year following the determination by  
224 the administrator concerning the wilful nondeclaration. If the person,  
225 firm or corporation is paying or should have been paying, the  
226 maximum rate at the time of the determination, the administrator may  
227 require that such maximum rate continue for a period of three years  
228 following the determination.

229 (f) Any person who knowingly makes a false statement or  
230 representation or fails to disclose a material fact in order to obtain,  
231 increase, prevent or decrease any benefit, contribution or other  
232 payment under this chapter, or under any similar law of another state  
233 or of the United States in regard to which this state acted as agent  
234 pursuant to an agreement authorized by section 31-225, whether to be  
235 made to or by himself or any other person, and who receives any such  
236 benefit, pays any such contribution or alters any such payment to his  
237 advantage by such fraudulent means (1) shall be guilty of a class A  
238 misdemeanor if such benefit, contribution or payment amounts to five  
239 hundred dollars or less or (2) shall be guilty of a class D felony if such  
240 benefit, contribution or payment amounts to more than five hundred  
241 dollars. Notwithstanding the provisions of section 54-193, no person  
242 shall be prosecuted for a violation of the provisions of this subsection  
243 committed on or after October 1, 1977, except within five years next  
244 after such violation has been committed.

245 (g) Any person, firm or corporation who knowingly fails to pay  
246 contributions or other payments due under this chapter shall be guilty  
247 of a class A misdemeanor. Notwithstanding the provisions of section  
248 54-193, no person shall be prosecuted for a violation of the provisions  
249 of this subsection committed on or after October 1, 1987, except within  
250 five years after such violation has been committed.

251 (h) Any person who knowingly violates any provision of this  
252 chapter for which no other penalty is provided by law shall be fined

253 not more than two hundred dollars or imprisoned not more than six  
254 months or both.

255 (i) Any person who wilfully violates any regulation made by the  
256 administrator or the board under the authority of this chapter, for  
257 which no penalty is specifically provided, shall be fined not more than  
258 two hundred dollars.

259 (j) All interest payments collected by the administrator under  
260 subsection (b) of this section shall be deposited in the Employment  
261 Security Administration Fund.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	31-249h
Sec. 2	<i>October 1, 2009</i>	31-273

**LAB**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

---

***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill explicitly allows the late filing of certain unemployment compensation appeals and has no fiscal impact as it conforms to current practice by the Department of Labor.

**OLR Bill Analysis****HB 6184*****AN ACT PRESERVING GOOD CAUSE FOR LATE FILING OF CERTAIN UNEMPLOYMENT COMPENSATION APPEALS.*****SUMMARY:**

Under current law, an unemployment compensation claimant has 21 days to appeal a decision that he or she received either (1) an overpayment of benefits or (2) benefits through fraud. This bill allows appeals after 21 days of either type of decision if the claimant shows good cause for the late filing. The bill requires the Labor Department to issue regulations defining "good cause" for this purpose by January 1, 2011. Under law and unchanged by the bill, the 21 days for appeal begins when the decision notice is mailed to the claimant.

The bill also permits an appeal or motion to be timely within the 21-day period if it bears a U.S. Postal Service postmark indicating it was mailed within 21 days. It specifies that appeals with post marks from private postage meters are not timely if received after the 21 days.

EFFECTIVE DATE: October 1, 2009

**BACKGROUND*****Benefits Due to Fraud and Overpayments***

By law, a claimant found to have received benefits through fraud must repay the benefits and may be ordered to pay other penalties. The labor commissioner, or her designee, makes determinations of fraud after holding a hearing, of which the claimant is notified, to help determine the facts.

By law, a claimant can be charged for a benefit overpayment if he or she received an amount that was greater than what was due under

law, as long as the error causing the overpayment is discovered and brought to the claimant's attention within a year of the receipt of the benefits. Claims examiners make overpayment determinations.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 11 Nay 0 (02/26/2009)