



Senate

General Assembly

File No. 40

February Session, 2010

Senate Bill No. 95

Senate, March 16, 2010

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, 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 Section 31-273 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) Any person who, through error, has received any sum as
4 benefits under this chapter while any condition for the receipt of
5 benefits imposed by this chapter was not fulfilled in his case, or has
6 received a greater amount of benefits than was due him under this
7 chapter, shall be charged with an overpayment of a sum equal to the
8 amount so overpaid to him, provided such error has been discovered
9 and brought to his attention within one year of the date of receipt of
10 such benefits. A person whose receipt of such a sum was not due to
11 fraud, wilful misrepresentation or wilful nondisclosure by himself or
12 another shall be entitled to a hearing before an examiner designated by
13 the administrator. Such examiner shall determine whether: [(A)] (1)
14 Such person shall repay such sum to the administrator for the

15 Unemployment Compensation Fund, [(B)] (2) such sum shall be
16 recouped by offset from such person's unemployment benefits, or [(C)]
17 (3) repayment or recoupment of such sum would defeat the purpose of
18 the benefits or be against equity and good conscience and should be
19 waived. In any case where the examiner determines that such sum
20 shall be recouped by offset from a person's unemployment benefits,
21 the deduction from benefits shall not exceed fifty per cent of the
22 person's weekly benefit amount. Where such offset is insufficient to
23 recoup the full amount of the overpayment, the claimant shall repay
24 the remaining amount in accordance with a repayment schedule as
25 determined by the examiner. If the claimant fails to repay according to
26 the schedule, the administrator may recover such overpayment
27 through a wage execution against the claimant's earnings upon his
28 return to work in accordance with the provisions of section 52-361a.
29 Any person with respect to whom a determination of overpayment has
30 been made, according to the provisions of this subsection, shall be
31 given notice of such determination and the provisions for repayment
32 or recoupment of the amount overpaid. No repayment shall be
33 required and no deduction from benefits shall be made until the
34 determination of overpayment has become final. The determination of
35 overpayment shall be final unless the claimant, within twenty-one
36 days after notice of such determination was mailed to him at his last-
37 known address, files an appeal from such determination to a referee,
38 except that (A) any such appeal that is filed after such twenty-one-day
39 period may be considered to be timely filed if the filing party shows
40 good cause, as defined in regulations adopted pursuant to section 31-
41 249h, for the late filing, (B) if the last day for filing an appeal falls on
42 any day when the offices of the Employment Security Division are not
43 open for business, such last day shall be extended to the next business
44 day, and (C) if any such appeal is filed by mail, the appeal shall be
45 considered timely filed if the appeal was received within such twenty-
46 one-day period or bears a legible United States postal service postmark
47 that indicates that within such twenty-one-day period the appeal was
48 placed in the possession of postal authorities for delivery to the
49 appropriate office. Posting dates attributable to private postage meters

50 shall not be considered in determining the timeliness of appeals filed
51 by mail. [If the last day for filing an appeal falls on any day when the
52 offices of the Employment Security Division are not open for business,
53 such last day shall be extended to the next business day.] The appeal
54 shall be heard in the same manner provided in section 31-242 for an
55 appeal from the decision of an examiner on a claim for benefits. Any
56 party aggrieved by the decision of the referee, including the
57 administrator, may appeal to the Employment Security Board of
58 Review in the manner provided in section 31-249. Decisions of the
59 board may be appealed to the Superior Court in the manner provided
60 in section 31-249b. The administrator is authorized, eight years after
61 the payment of any benefits described in this subsection, to cancel any
62 claim for such repayment or recoupment which in his opinion is
63 uncollectible. Effective January 1, 1996, and annually thereafter, the
64 administrator shall report to the joint standing committee of the
65 General Assembly having cognizance of matters relating to finance,
66 revenue and bonding and the joint standing committee of the General
67 Assembly having cognizance of matters relating to labor and public
68 employees, the aggregate number and value of all such claims deemed
69 uncollectible and therefore cancelled during the previous calendar
70 year. Any determination of overpayment made under this section
71 which becomes final may be enforced by a wage execution in the same
72 manner as a judgment of the Superior Court when the claimant fails to
73 pay according to his repayment schedule. The court may issue a wage
74 execution upon any final determination of overpayment in the same
75 manner as in cases of judgments rendered in the Superior Court, and
76 upon the filing of an application to the court for an execution, the
77 administrator shall send to the clerk of the court a certified copy of
78 such determination.

79 (b) (1) Any person who, by reason of fraud, wilful misrepresentation
80 or wilful nondisclosure by such person or by another of a material fact,
81 has received any sum as benefits under this chapter while any
82 condition for the receipt of benefits imposed by this chapter was not
83 fulfilled in such person's case, or has received a greater amount of
84 benefits than was due such person under this chapter, shall be charged

85 with an overpayment and shall be liable to repay to the administrator
86 for the Unemployment Compensation Fund a sum equal to the
87 amount so overpaid to such person. If such person does not make
88 repayment in full of the sum overpaid, the administrator shall recoup
89 such sum by offset from such person's unemployment benefits. The
90 deduction from benefits shall be one hundred per cent of the person's
91 weekly benefit entitlement until the full amount of the overpayment
92 has been recouped. Where such offset is insufficient to recoup the full
93 amount of the overpayment, the claimant shall repay the remaining
94 amount plus, for any determination of an overpayment made on or
95 after July 1, 2005, interest at the rate of one per cent of the amount so
96 overpaid per month, in accordance with a repayment schedule as
97 determined by the examiner. If the claimant fails to repay according to
98 the schedule, the administrator may recover such overpayment plus
99 interest through a wage execution against the claimant's earnings upon
100 the claimant's return to work in accordance with the provisions of
101 section 52-361a. In addition, the administrator may request the
102 Commissioner of Administrative Services to seek reimbursement for
103 such amount pursuant to section 12-742. The administrator is
104 authorized, eight years after the payment of any benefits described in
105 this subsection, to cancel any claim for such repayment or recoupment
106 which in the administrator's opinion is uncollectible. Effective January
107 1, 1996, and annually thereafter, the administrator shall report to the
108 joint standing committee of the General Assembly having cognizance
109 of matters relating to finance, revenue and bonding and the joint
110 standing committee of the General Assembly having cognizance of
111 matters relating to labor and public employees, the aggregate number
112 and value of all such claims deemed uncollectible and therefore
113 cancelled during the previous calendar year.

114 (2) Any person who has made a claim for benefits under this
115 chapter and has knowingly made a false statement or representation or
116 has knowingly failed to disclose a material fact in order to obtain
117 benefits or to increase the amount of benefits to which such person
118 may be entitled under this chapter shall forfeit benefits for not less
119 than one or more than thirty-nine compensable weeks following

120 determination of such offense or offenses, during which weeks such
121 person would otherwise have been eligible to receive benefits. For the
122 purposes of section 31-231b, such person shall be deemed to have
123 received benefits for such forfeited weeks. This penalty shall be in
124 addition to any other applicable penalty under this section and in
125 addition to the liability to repay any moneys so received by such
126 person and shall not be confined to a single benefit year.

127 (3) Any person charged with the fraudulent receipt of benefits or the
128 making of a fraudulent claim, as provided in this subsection, shall be
129 entitled to a hearing before the administrator, or a deputy or
130 representative designated by the administrator. Notice of the time and
131 place of such hearing, and the reasons for such hearing, shall be given
132 to the person not less than five days prior to the date appointed for
133 such hearing. The administrator shall determine, on the basis of facts
134 found by the administrator, whether or not a fraudulent act subject to
135 the penalties of this subsection has been committed and, upon such
136 finding, shall fix the penalty for any such offense according to the
137 provisions of this subsection. Any person determined by the
138 administrator to have committed fraud under the provisions of this
139 section shall be liable for repayment to the administrator of the
140 Unemployment Compensation Fund for any benefits determined by
141 the administrator to have been collected fraudulently, as well as any
142 other penalties assessed by the administrator in accordance with the
143 provisions of this subsection. Until such liabilities have been met to the
144 satisfaction of the administrator, such person shall forfeit any right to
145 receive benefits under the provisions of this chapter. Notification of
146 such decision and penalty shall be mailed to such person's last known
147 address and shall be final unless such person files an appeal not later
148 than twenty-one days after the mailing date of such notification, except
149 that (A) any such appeal that is filed after such twenty-one-day period
150 may be considered to be timely filed if the filing party shows good
151 cause, as defined in regulations adopted pursuant to section 31-249h,
152 for the late filing, (B) if the last day for filing an appeal falls on any day
153 when the offices of the Employment Security Division are not open for
154 business, such last day shall be extended to the next business day, and

155 (C) if any such appeal is filed by mail, the appeal shall be considered
156 timely filed if the appeal was received within such twenty-one-day
157 period or bears a legible United States postal service postmark that
158 indicates that within such twenty-one-day period the appeal was
159 placed in the possession of postal authorities for delivery to the
160 appropriate office. Posting dates attributable to private postage meters
161 shall not be considered in determining the timeliness of appeals filed
162 by mail. [If the last day for filing an appeal falls on any day when the
163 offices of the Employment Security Division are not open for business,
164 such last day shall be extended to the next business day.] Such appeal
165 shall be heard by a referee in the same manner provided in section 31-
166 242 for an appeal from the decision of an examiner on a claim for
167 benefits. The manner in which such appeals shall be heard and appeals
168 taken therefrom to the board of review and then to the Superior Court,
169 either by the administrator or the claimant, shall be in accordance with
170 the provisions set forth in section 31-249 or 31-249b, as the case may be.
171 Any determination of overpayment made under this subsection which
172 becomes final on or after October 1, 1995, may be enforced in the same
173 manner as a judgment of the Superior Court when the claimant fails to
174 pay according to the claimant's repayment schedule. The court may
175 issue execution upon any final determination of overpayment in the
176 same manner as in cases of judgments rendered in the Superior Court;
177 and upon the filing of an application to the court for an execution, the
178 administrator shall send to the clerk of the court a certified copy of
179 such determination.

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

183 (d) If, after investigation, the administrator determines that there is
184 probable cause to believe that the person, firm or corporation has
185 wilfully failed to declare payment of wages in the payroll record, the
186 administrator shall provide an opportunity for a hearing on the matter.
187 If a hearing is requested, it shall be conducted by the administrator, or
188 a deputy or representative designated by him. Notice of the time and

189 place of such hearing, and the reasons therefor, shall be given to the
190 person, firm, or corporation not less than five days prior to the date
191 appointed for such hearing. If the administrator determines, on the
192 basis of the facts found by him, that such nondeclaration occurred and
193 was wilful, the administrator shall fix the payments and penalties in
194 accordance with the provisions of subsection (e) of this section. Such
195 person, firm or corporation may appeal to the superior court for the
196 judicial district of Hartford or for the judicial district in which the
197 employer's principal place of business is located. Such court shall give
198 notice of a time and place of hearing to the administrator. At such
199 hearing the court may confirm or correct the administrator's
200 determination. If the administrator's determination is confirmed, the
201 cost of such proceedings, as in civil actions, shall be assessed against
202 such person, firm or corporation. No costs shall be assessed against the
203 state on such appeal.

204 (e) If the administrator determines that any person, firm or
205 corporation has wilfully failed to declare the payment of wages on
206 payroll records, the administrator may impose a penalty of ten per
207 cent of the total contributions past due to the administrator, as
208 determined pursuant to section 31-270. Such penalty shall be in
209 addition to any other applicable penalty and interest under section 31-
210 266. In addition, the administrator may require the person, firm or
211 corporation to make contributions at the maximum rate provided in
212 section 31-225a for a period of one year following the determination by
213 the administrator concerning the wilful nondeclaration. If the person,
214 firm or corporation is paying or should have been paying, the
215 maximum rate at the time of the determination, the administrator may
216 require that such maximum rate continue for a period of three years
217 following the determination.

218 (f) Any person who knowingly makes a false statement or
219 representation or fails to disclose a material fact in order to obtain,
220 increase, prevent or decrease any benefit, contribution or other
221 payment under this chapter, or under any similar law of another state
222 or of the United States in regard to which this state acted as agent

223 pursuant to an agreement authorized by section 31-225, whether to be
 224 made to or by himself or any other person, and who receives any such
 225 benefit, pays any such contribution or alters any such payment to his
 226 advantage by such fraudulent means (1) shall be guilty of a class A
 227 misdemeanor if such benefit, contribution or payment amounts to five
 228 hundred dollars or less, or (2) shall be guilty of a class D felony if such
 229 benefit, contribution or payment amounts to more than five hundred
 230 dollars. Notwithstanding the provisions of section 54-193, no person
 231 shall be prosecuted for a violation of the provisions of this subsection
 232 committed on or after October 1, 1977, except within five years next
 233 after such violation has been committed.

234 (g) Any person, firm or corporation who knowingly fails to pay
 235 contributions or other payments due under this chapter shall be guilty
 236 of a class A misdemeanor. Notwithstanding the provisions of section
 237 54-193, no person shall be prosecuted for a violation of the provisions
 238 of this subsection committed on or after October 1, 1987, except within
 239 five years after such violation has been committed.

240 (h) Any person who knowingly violates any provision of this
 241 chapter for which no other penalty is provided by law shall be fined
 242 not more than two hundred dollars or imprisoned not more than six
 243 months or both.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	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 allows appeals of certain unemployment compensation decisions to the Department of Labor (DOL) after 21 days if the claimant can show good cause for such late filing. This does not result in any fiscal impact to the state or municipalities.

The bill applies to appeals in cases of overpayment of unemployment compensation benefits or unemployment compensation benefits obtained through fraud. Under current law, a claimant has 21 days to file an appeal in such cases, with no provision for late filing¹. The bill allows for late filing provided good cause is shown. This is not anticipated to result in additional appeals and as such does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

Sources: Department of Labor "Claimant's Guide to the Appeals Process"
Office of Legislative Research

¹ Late filing is permitted for all other types of unemployment compensation appeals when good cause can be shown.

OLR Bill Analysis**SB 95*****AN ACT PRESERVING GOOD CAUSE FOR LATE FILING OF CERTAIN UNEMPLOYMENT COMPENSATION APPEALS.*****SUMMARY:**

This bill sets a standard for appealing certain unemployment compensation claims decisions. Under current law, an unemployment compensation claimant has 21 days to appeal a decision that he or she was overpaid benefits, or received 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. It uses the definition of “good cause” used in existing unemployment appeals regulations. By law, unchanged by the bill, the 21 days for appeal begins when the decision is mailed to the claimant.

Under the bill, an appeal or motion is also timely if it bears a U.S. Postal Service postmark indicating it was mailed within 21 days. It specifies that appeals with postmarks from private postage meters are not timely if received after the 21 days.

DEFINITION OF “GOOD CAUSE”

Under Labor Department regulations, a claimant has good cause for not filing an appeal within 21 days of the compensation decision if a reasonable individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the unemployment compensation referee must consider all relevant factors, including:

1. the extent to which the claimant has demonstrated diligence in previous unemployment compensation dealings;
2. whether the claimant was represented;

3. the claimant's familiarity with the procedures of the appeals division;
4. whether the claimant received timely and adequate notice of the need to act;
5. administrative error or failure by the department's unemployment administrator or appeals division;
6. factors outside the claimant control that prevented a timely action; and
7. whether the claimant acted diligently in filing an appeal once the reason for the late filing no longer existed (Conn. Agencies Reg., § 31-237g-15).

EFFECTIVE DATE: October 1, 2010

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 more than what was due under law, as long as he or she is notified of the error causing the overpayment 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 (03/04/2010)