



General Assembly

January Session, 2013

Raised Bill No. 909

LCO No. 3208



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING UNEMPLOYMENT COMPENSATION CONFORMITY.

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 Section 31-273 of the general statutes is repealed and the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, 2013*):

3 (a) (1) 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) Such
14 person shall repay such sum to the administrator for the
15 Unemployment Compensation Fund, (B) such sum shall be recouped

16 by offset from such person's unemployment benefits, or (C) repayment
17 or recoupment of such sum would defeat the purpose of the benefits or
18 be against equity and good conscience and should be waived. In any
19 case where the examiner determines that such sum shall be recouped
20 by offset from a person's unemployment benefits, the deduction from
21 benefits shall not exceed fifty per cent of the person's weekly benefit
22 amount. Where such offset is insufficient to recoup the full amount of
23 the overpayment, the claimant shall repay the remaining amount in
24 accordance with a repayment schedule as determined by the examiner.
25 If the claimant fails to repay according to the schedule, the
26 administrator may recover such overpayment through a wage
27 execution against the claimant's earnings upon his return to work in
28 accordance with the provisions of section 52-361a, and the
29 administrator may request the Commissioner of Administrative
30 Services to seek reimbursement for such amount pursuant to section
31 12-742. Any person with respect to whom a determination of
32 overpayment has been made, according to the provisions of this
33 subsection, shall be given notice of such determination and the
34 provisions for repayment or recoupment of the amount overpaid. No
35 repayment shall be required and no deduction from benefits shall be
36 made until the determination of overpayment has become final.

37 (2) The determination of overpayment shall be final unless the
38 claimant, within twenty-one days after notice of such determination
39 was mailed to him at his last-known address, files an appeal from such
40 determination to a referee, except that any such appeal that is filed
41 after such twenty-one-day period may be considered to be timely filed
42 if the filing party shows good cause, as defined in regulations adopted
43 pursuant to section 31-249h, for the late filing. If the last day for filing
44 an appeal falls on any day when the offices of the Employment
45 Security Division are not open for business, such last day shall be
46 extended to the next business day. If any such appeal is filed by mail,
47 the appeal shall be considered timely filed if the appeal was received
48 within such twenty-one-day period or bears a legible United States

49 postal service postmark that indicates that within such twenty-one-day
50 period the appeal was placed in the possession of postal authorities for
51 delivery to the appropriate office. Posting dates attributable to private
52 postage meters shall not be considered in determining the timeliness of
53 appeals filed by mail.

54 (3) The appeal shall be heard in the same manner provided in
55 section 31-242 for an appeal from the decision of an examiner on a
56 claim for benefits. Any party aggrieved by the decision of the referee,
57 including the administrator, may appeal to the Employment Security
58 Board of Review in the manner provided in section 31-249. Decisions
59 of the board may be appealed to the Superior Court in the manner
60 provided in section 31-249b. The administrator is authorized, eight
61 years after the payment of any benefits described in this subsection, to
62 cancel any claim for such repayment or recoupment which in his
63 opinion is uncollectible. Effective January 1, 1996, and annually
64 thereafter, the administrator shall report to the joint standing
65 committee of the General Assembly having cognizance of matters
66 relating to finance, revenue and bonding and the joint standing
67 committee of the General Assembly having cognizance of matters
68 relating to labor and public employees, the aggregate number and
69 value of all such claims deemed uncollectible and therefore cancelled
70 during the previous calendar year. Any determination of overpayment
71 made under this section which becomes final may be enforced by a
72 wage execution in the same manner as a judgment of the Superior
73 Court when the claimant fails to pay according to his repayment
74 schedule. The court may issue a wage execution upon any final
75 determination of overpayment in the same manner as in cases of
76 judgments rendered in the Superior Court, and upon the filing of an
77 application to the court for an execution, the administrator shall send
78 to the clerk of the court a certified copy of 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. If the administrator's actions
104 are insufficient to recover such overpayment, the administrator may
105 submit the outstanding balance to the Internal Revenue Service for the
106 purpose of offsetting the claimant's federal tax refund pursuant to 26
107 USC 6402(d), 31 USC 3720A or other applicable federal laws. The
108 administrator is authorized, eight years after the payment of any
109 benefits described in this subsection, to cancel any claim for such
110 repayment or recoupment which in the administrator's opinion is
111 uncollectible. Effective January 1, 1996, and annually thereafter, the
112 administrator shall report to the joint standing committee of the
113 General Assembly having cognizance of matters relating to finance,
114 revenue and bonding and the joint standing committee of the General
115 Assembly having cognizance of matters relating to labor and public

116 employees, the aggregate number and value of all such claims deemed
117 uncollectible and therefore cancelled during the previous calendar
118 year.

119 (2) [Any] (A) For any determination of an overpayment made prior
120 to October 1, 2013, any person who has made a claim for benefits
121 under this chapter and has knowingly made a false statement or
122 representation or has knowingly failed to disclose a material fact in
123 order to obtain benefits or to increase the amount of benefits to which
124 such person may be entitled under this chapter shall forfeit benefits for
125 not less than one or more than thirty-nine compensable weeks
126 following determination of such offense or offenses, during which
127 weeks such person would otherwise have been eligible to receive
128 benefits. For the purposes of section 31-231b, such person shall be
129 deemed to have received benefits for such forfeited weeks. This
130 penalty shall be in addition to any other applicable penalty under this
131 section and in addition to the liability to repay any moneys so received
132 by such person and shall not be confined to a single benefit year. (B)
133 For any determination of an overpayment made on or after October 1,
134 2013, any person who has made a claim for benefits under this chapter
135 and has knowingly made a false statement or representation or has
136 knowingly failed to disclose a material fact in order to obtain benefits
137 or to increase the amount of benefits to which such person may be
138 entitled under this chapter shall be subject to a penalty of fifty per cent
139 of the amount of overpayment for the first offense and a penalty of one
140 hundred per cent of the amount of overpayment for any subsequent
141 offense. This penalty shall be in addition to the liability to repay the
142 full amount of overpayment and shall not be confined to a single
143 benefit year. Thirty-five per cent of any such penalty shall be paid into
144 the Unemployment Compensation Trust Fund and sixty-five per cent
145 of such penalty shall be paid into the Employment Security
146 Administrative Fund. The penalty amounts computed in this
147 subparagraph shall be rounded to the nearest dollar with fractions of a
148 dollar of exactly fifty cents rounded upward.

149 (3) Any person charged with the fraudulent receipt of benefits or the
150 making of a fraudulent claim, as provided in this subsection, shall be
151 entitled to a hearing before the administrator, or a deputy or
152 representative designated by the administrator. Notice of the time and
153 place of such hearing, and the reasons for such hearing, shall be given
154 to the person not less than five days prior to the date appointed for
155 such hearing. The administrator shall determine, on the basis of facts
156 found by the administrator, whether or not a fraudulent act subject to
157 the penalties of this subsection has been committed and, upon such
158 finding, shall fix the penalty for any such offense according to the
159 provisions of this subsection. Any person determined by the
160 administrator to have committed fraud under the provisions of this
161 section shall be liable for repayment to the administrator of the
162 Unemployment Compensation Fund for any benefits determined by
163 the administrator to have been collected fraudulently, as well as any
164 other penalties assessed by the administrator in accordance with the
165 provisions of this subsection. Until such liabilities have been met to the
166 satisfaction of the administrator, such person shall forfeit any right to
167 receive benefits under the provisions of this chapter. Notification of
168 such decision and penalty shall be mailed to such person's last known
169 address and shall be final unless such person files an appeal not later
170 than twenty-one days after the mailing date of such notification, except
171 that (A) any such appeal that is filed after such twenty-one-day period
172 may be considered to be timely filed if the filing party shows good
173 cause, as defined in regulations adopted pursuant to section 31-249h,
174 for the late filing, (B) if the last day for filing an appeal falls on any day
175 when the offices of the Employment Security Division are not open for
176 business, such last day shall be extended to the next business day, and
177 (C) if any such appeal is filed by mail, the appeal shall be considered
178 timely filed if the appeal was received within such twenty-one-day
179 period or bears a legible United States postal service postmark that
180 indicates that within such twenty-one-day period the appeal was
181 placed in the possession of postal authorities for delivery to the
182 appropriate office. Posting dates attributable to private postage meters

183 shall not be considered in determining the timeliness of appeals filed
184 by mail. Such appeal shall be heard by a referee in the same manner
185 provided in section 31-242 for an appeal from the decision of an
186 examiner on a claim for benefits. The manner in which such appeals
187 shall be heard and appeals taken therefrom to the board of review and
188 then to the Superior Court, either by the administrator or the claimant,
189 shall be in accordance with the provisions set forth in section 31-249 or
190 31-249b, as the case may be. Any determination of overpayment made
191 under this subsection which becomes final on or after October 1, 1995,
192 may be enforced in the same manner as a judgment of the Superior
193 Court when the claimant fails to pay according to the claimant's
194 repayment schedule. The court may issue execution upon any final
195 determination of overpayment in the same manner as in cases of
196 judgments rendered in the Superior Court; and upon the filing of an
197 application to the court for an execution, the administrator shall send
198 to the clerk of the court a certified copy of such determination.

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

202 (d) If, after investigation, the administrator determines that there is
203 probable cause to believe that the person, firm or corporation has
204 wilfully failed to declare payment of wages in the payroll record, the
205 administrator shall provide an opportunity for a hearing on the matter.
206 If a hearing is requested, it shall be conducted by the administrator, or
207 a deputy or representative designated by him. Notice of the time and
208 place of such hearing, and the reasons therefor, shall be given to the
209 person, firm, or corporation not less than five days prior to the date
210 appointed for such hearing. If the administrator determines, on the
211 basis of the facts found by him, that such nondeclaration occurred and
212 was wilful, the administrator shall fix the payments and penalties in
213 accordance with the provisions of subsection (e) of this section. Such
214 person, firm or corporation may appeal to the superior court for the
215 judicial district of Hartford or for the judicial district in which the

216 employer's principal place of business is located. Such court shall give
217 notice of a time and place of hearing to the administrator. At such
218 hearing the court may confirm or correct the administrator's
219 determination. If the administrator's determination is confirmed, the
220 cost of such proceedings, as in civil actions, shall be assessed against
221 such person, firm or corporation. No costs shall be assessed against the
222 state on such appeal.

223 (e) If the administrator determines that any person, firm or
224 corporation has wilfully failed to declare the payment of wages on
225 payroll records, the administrator may impose a penalty of ten per
226 cent of the total contributions past due to the administrator, as
227 determined pursuant to section 31-270. Such penalty shall be in
228 addition to any other applicable penalty and interest under section 31-
229 266. In addition, the administrator may require the person, firm or
230 corporation to make contributions at the maximum rate provided in
231 section 31-225a for a period of one year following the determination by
232 the administrator concerning the wilful nondeclaration. If the person,
233 firm or corporation is paying or should have been paying, the
234 maximum rate at the time of the determination, the administrator may
235 require that such maximum rate continue for a period of three years
236 following the determination.

237 (f) Any person who knowingly makes a false statement or
238 representation or fails to disclose a material fact in order to obtain,
239 increase, prevent or decrease any benefit, contribution or other
240 payment under this chapter, or under any similar law of another state
241 or of the United States in regard to which this state acted as agent
242 pursuant to an agreement authorized by section 31-225, whether to be
243 made to or by himself or any other person, and who receives any such
244 benefit, pays any such contribution or alters any such payment to his
245 advantage by such fraudulent means (1) shall be guilty of a class A
246 misdemeanor if such benefit, contribution or payment amounts to five
247 hundred dollars or less or (2) shall be guilty of a class D felony if such
248 benefit, contribution or payment amounts to more than five hundred

249 dollars. Notwithstanding the provisions of section 54-193, no person
250 shall be prosecuted for a violation of the provisions of this subsection
251 committed on or after October 1, 1977, except within five years next
252 after such violation has been committed.

253 (g) Any person, firm or corporation who knowingly fails to pay
254 contributions or other payments due under this chapter shall be guilty
255 of a class A misdemeanor. Notwithstanding the provisions of section
256 54-193, no person shall be prosecuted for a violation of the provisions
257 of this subsection committed on or after October 1, 1987, except within
258 five years after such violation has been committed.

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

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

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

270 (k) For any determination of an overpayment made on or after
271 October 1, 2013, if the administrator determines that an overpayment
272 was caused by an employer's failure to timely or adequately respond
273 to the administrator's request for information relating to a claim in a
274 manner prescribed by the administrator, such employer's
275 proportionate share of benefits paid to the claimant for each week the
276 overpayment occurred shall be charged against such employer's
277 account.

278 Sec. 2. Section 31-241 of the general statutes is repealed and the

279 following is substituted in lieu thereof (*Effective October 1, 2013*):

280 (a) The administrator, or a deputy or representative designated by
281 him and hereinafter referred to as an examiner, shall promptly
282 examine the initiating claim and, on the basis of the facts found by
283 him, shall determine whether or not such claim is valid and, if valid,
284 the weekly amount of benefits payable and the maximum possible
285 duration thereof. He shall promptly notify the claimant of the decision
286 and the reasons therefor, which notification shall set forth the
287 provision of this section for appeal. The administrator or an examiner
288 shall promptly examine each claim for a benefit payment for a week of
289 unemployment and, on the basis of the facts found by him, shall
290 determine whether or not the claimant is eligible to receive such
291 benefit payment for such week and the amount of benefits payable for
292 such week. The determination of eligibility by the administrator or an
293 examiner shall be based upon evidence or testimony presented in such
294 a manner as the administrator shall prescribe, including in writing, by
295 telephone or by other electronic means at a hearing called for such
296 purpose. The administrator or an examiner may prescribe an in person
297 hearing at his or her discretion, provided if an in person hearing is
298 requested, the request may not be unreasonably denied by the
299 administrator or an examiner, as the case may be. Notice of the
300 decision and the reasons therefor shall be given to the claimant. The
301 employers against whose accounts charges may be made due to any
302 benefits awarded by the decision shall be notified of the initial
303 determination of the claimant's benefit entitlement at the time notice is
304 given to the claimant, which notification shall set forth the provisions
305 of this section for appeal, provided any employer who claims that the
306 claimant is ineligible for benefits because his unemployment is due to
307 the existence of a labor dispute at such employer's factory,
308 establishment or other premises, shall be notified of the decision and
309 the reasons therefor, whether or not benefits awarded by the decision
310 might be charged against such employer's account. The employer's
311 appeal rights shall be limited to the first notice he is given in

312 connection with a claim which sets forth his appeal rights, and no issue
313 may be appealed if notice of such issue and the right to appeal such
314 issue had previously been given. [Notwithstanding] For any
315 determination of an overpayment made prior to October 1, 2013,
316 notwithstanding any provisions of this chapter to the contrary,
317 whenever the employer, after receiving notice of such hearing, fails to
318 appear at the hearing or fails to timely submit a written response in a
319 manner prescribed by the administrator, such employer's
320 proportionate share of benefits paid to the claimant prior to the
321 issuance of a decision by (1) a referee under section 31-242, or (2) the
322 Employment Security Board of Review under section 31-249a, for any
323 week beginning prior to the forty-second day after the end of the
324 calendar week in which the employer's appeal was filed shall be
325 charged against such employer's account and the claimant shall not be
326 charged with an overpayment with respect to such benefits pursuant
327 to subsection (a) of section 31-273. The decision of the administrator
328 shall be final and benefits shall be paid or denied in accordance
329 therewith unless the claimant or any of such employers, within
330 twenty-one calendar days after such notification was mailed to his last-
331 known address, files an appeal from such decision and applies for a
332 hearing, provided [(1)] (A) any such appeal which is filed after such
333 twenty-one-day period may be considered to be timely filed if the
334 filing party shows good cause, as defined in regulations adopted
335 pursuant to section 31-249h, for the late filing, [(2)] (B) if the last day
336 for filing an appeal falls on any day when the offices of the
337 Employment Security Division are not open for business, such last day
338 shall be extended to the next business day, and [(3)] (C) if any such
339 appeal is filed by mail, such appeal shall be considered timely filed if it
340 was received within such twenty-one-day period or bears a legible
341 United States postal service postmark which indicates that within such
342 twenty-one-day period it was placed in the possession of such postal
343 authorities for delivery to the appropriate office. Posting dates
344 attributable to private postage meters shall not be considered in
345 determining the timeliness of appeals filed by mail. Where the

346 administrator or examiner has determined that the claimant is eligible
347 for benefits, benefits shall be paid promptly in accordance with the
348 determination regardless of the pendency of the period to file an
349 appeal or the pendency of such appeal. No examiner shall participate
350 in any case in which he is an interested party. Any person who has
351 filed a claim for benefits pursuant to an agreement entered into by the
352 administrator with the proper agency under the laws of the United
353 States, whereby the administrator makes payment of unemployment
354 compensation out of funds supplied by the United States, may in like
355 manner file an appeal from the decision of such claim and apply for a
356 hearing, and the United States or the agency thereof which had
357 employed such person may in like manner appeal from the decision on
358 such claim and apply for a hearing.

359 (b) The administrator shall adopt regulations, in accordance with
360 the provisions of section 31-244 and chapter 54, effective July 1, 1992,
361 establishing procedures and guidelines necessary to implement the
362 provisions of this section. Such regulations shall prescribe a minimum
363 number of days of advance notice to be afforded parties prior to a
364 hearing and standards for determining the timeliness of written
365 responses to hearing notices.

366 Sec. 3. Subsection (h) of section 31-225a of the general statutes is
367 repealed and the following is substituted in lieu thereof (*Effective*
368 *October 1, 2013*):

369 (h) (1) With respect to each benefit year commencing on or after July
370 1, 1978, notice of determination of the claimant's benefit entitlement for
371 such benefit year shall include notice of the allocation of benefit
372 charges of the claimant's base period employers and each such
373 employer shall be mailed a copy of such notice of determination and
374 shall be an interested party thereto. Such determination shall be final
375 unless the claimant or any of such employers files an appeal from such
376 decision in accordance with the provisions of section 31-241. (2) The
377 administrator shall, not less frequently than once each calendar

378 quarter, mail a statement of charges to each employer to whose
379 experience record any charges have been made since the last previous
380 such statement. Such statement shall show, with respect to each week
381 for which benefits have been paid and charged, the name and Social
382 Security account number of the claimant who was paid the benefit, the
383 amount of the benefits charged for such week and the total amount
384 charged in the quarter. (3) The statement of charges provided for in
385 subdivision (2) of this subsection shall constitute notice to the
386 employer that it has been determined that the benefits reported in such
387 statement were properly payable under this chapter to the claimants
388 for the weeks and in the amounts shown in such statements. If the
389 employer contends that benefits have been improperly charged due to
390 fraud or error, a written protest setting forth reasons therefor shall be
391 filed with the administrator within sixty days of the mailing date of the
392 quarterly statement. An eligibility issue shall not be reopened on the
393 basis of such quarterly statement if notification of such eligibility issue
394 had previously been given to the employer under the provisions of
395 section 31-241, and he failed to file a timely appeal therefrom or had
396 the issue finally resolved against him. (4) The provisions of
397 subdivisions (2) and (3) of this subsection shall not apply to combined
398 wage claims paid under subsection (b) of section 31-255. For such
399 combined wage claims paid under the unemployment law of other
400 states, the administrator shall, each calendar quarter, mail a statement
401 of charges to each employer whose experience record has been
402 charged since the previous such statement. Such statement shall show
403 the name and social security number of the claimant who was paid the
404 benefits and the total amount of the benefits charged in the quarter.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	31-273
Sec. 2	<i>October 1, 2013</i>	31-241
Sec. 3	<i>October 1, 2013</i>	31-225a(h)

Statement of Purpose:

To impose a monetary penalty on claimants whose fraudulent acts result in overpayment and to prohibit relief from charges to an employer's unemployment compensation account when such charges result from an employer failing to respond in a timely or adequate manner to a request for information by the Labor Department.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]