



Substitute Senate Bill No. 909

Public Act No. 13-66

AN ACT CONCERNING UNEMPLOYMENT CONFORMITY.

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

Section 1. Section 31-273 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) (1) Any person who, through error, has received any sum as benefits under this chapter while any condition for the receipt of benefits imposed by this chapter was not fulfilled in his case, or has received a greater amount of benefits than was due him under this chapter, shall be charged with an overpayment of a sum equal to the amount so overpaid to him, provided such error has been discovered and brought to his attention within one year of the date of receipt of such benefits. A person whose receipt of such a sum was not due to fraud, wilful misrepresentation or wilful nondisclosure by himself or another shall be entitled to a hearing before an examiner designated by the administrator. Such examiner shall determine whether: (A) Such person shall repay such sum to the administrator for the Unemployment Compensation Fund, (B) such sum shall be recouped by offset from such person's unemployment benefits, or (C) repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived. In any case where the examiner determines that such sum shall be recouped

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by offset from a person's unemployment benefits, the deduction from benefits shall not exceed fifty per cent of the person's weekly benefit amount. Where such offset is insufficient to recoup the full amount of the overpayment, the claimant shall repay the remaining amount in accordance with a repayment schedule as determined by the examiner. If the claimant fails to repay according to the schedule, the administrator may recover such overpayment through a wage execution against the claimant's earnings upon his return to work in accordance with the provisions of section 52-361a, and the administrator may request the Commissioner of Administrative Services to seek reimbursement for such amount pursuant to section 12-742. Any person with respect to whom a determination of overpayment has been made, according to the provisions of this subsection, shall be given notice of such determination and the provisions for repayment or recoupment of the amount overpaid. No repayment shall be required and no deduction from benefits shall be made until the determination of overpayment has become final.

(2) The determination of overpayment shall be final unless the claimant, within twenty-one days after notice of such determination was mailed to him at his last-known address, files an appeal from such determination to a referee, except that any such appeal that is filed after such twenty-one-day period may be considered to be timely filed if the filing party shows good cause, as defined in regulations adopted pursuant to section 31-249h, for the late filing. If the last day for filing an appeal falls on any day when the offices of the Employment Security Division are not open for business, such last day shall be extended to the next business day. If any such appeal is filed by mail, the appeal shall be considered timely filed if the appeal was received within such twenty-one-day period or bears a legible United States postal service postmark that indicates that within such twenty-one-day period the appeal was placed in the possession of postal authorities for delivery to the appropriate office. Posting dates attributable to private

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postage meters shall not be considered in determining the timeliness of appeals filed by mail.

(3) The appeal shall be heard in the same manner provided in section 31-242 for an appeal from the decision of an examiner on a claim for benefits. Any party aggrieved by the decision of the referee, including the administrator, may appeal to the Employment Security Board of Review in the manner provided in section 31-249. Decisions of the board may be appealed to the Superior Court in the manner provided in section 31-249b. The administrator is authorized, eight years after the payment of any benefits described in this subsection, to cancel any claim for such repayment or recoupment which in his opinion is uncollectible. Effective January 1, 1996, and annually thereafter, the administrator shall report to the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding and the joint standing committee of the General Assembly having cognizance of matters relating to labor and public employees, the aggregate number and value of all such claims deemed uncollectible and therefore cancelled during the previous calendar year. Any determination of overpayment made under this section which becomes final may be enforced by a wage execution in the same manner as a judgment of the Superior Court when the claimant fails to pay according to his repayment schedule. The court may issue a wage execution upon any final determination of overpayment in the same manner as in cases of judgments rendered in the Superior Court, and upon the filing of an application to the court for an execution, the administrator shall send to the clerk of the court a certified copy of such determination.

(b) (1) Any person who, by reason of fraud, wilful misrepresentation or wilful nondisclosure by such person or by another of a material fact, has received any sum as benefits under this chapter while any condition for the receipt of benefits imposed by this chapter was not

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fulfilled in such person's case, or has received a greater amount of benefits than was due such person under this chapter, shall be charged with an overpayment and shall be liable to repay to the administrator for the Unemployment Compensation Fund a sum equal to the amount so overpaid to such person. If such person does not make repayment in full of the sum overpaid, the administrator shall recoup such sum by offset from such person's unemployment benefits. The deduction from benefits shall be one hundred per cent of the person's weekly benefit entitlement until the full amount of the overpayment has been recouped. Where such offset is insufficient to recoup the full amount of the overpayment, the claimant shall repay the remaining amount plus, for any determination of an overpayment made on or after July 1, 2005, interest at the rate of one per cent of the amount so overpaid per month, in accordance with a repayment schedule as determined by the examiner. If the claimant fails to repay according to the schedule, the administrator may recover such overpayment plus interest through a wage execution against the claimant's earnings upon the claimant's return to work in accordance with the provisions of section 52-361a. In addition, the administrator may request the Commissioner of Administrative Services to seek reimbursement for such amount pursuant to section 12-742. If the administrator's actions are insufficient to recover such overpayment, the administrator may submit the outstanding balance to the Internal Revenue Service for the purpose of offsetting the claimant's federal tax refund pursuant to 26 USC 6402(d), 31 USC 3720A or other applicable federal laws. The administrator is authorized, eight years after the payment of any benefits described in this subsection, to cancel any claim for such repayment or recoupment which in the administrator's opinion is uncollectible. Effective January 1, 1996, and annually thereafter, the administrator shall report to the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding and the joint standing committee of the General Assembly having cognizance of matters relating to labor and public

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

(2) [Any] (A) For any determination of an overpayment made prior to October 1, 2013, any person who has made a claim for benefits under this chapter and has knowingly made a false statement or representation or has knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which such person may be entitled under this chapter shall forfeit benefits for not less than one or more than thirty-nine compensable weeks following determination of such offense or offenses, during which weeks such person would otherwise have been eligible to receive benefits. For the purposes of section 31-231b, such person shall be deemed to have received benefits for such forfeited weeks. This penalty shall be in addition to any other applicable penalty under this section and in addition to the liability to repay any moneys so received by such person and shall not be confined to a single benefit year. (B) For any determination of an overpayment made on or after October 1, 2013, any person who has made a claim for benefits under this chapter and has knowingly made a false statement or representation or has knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which such person may be entitled under this chapter shall be subject to a penalty of fifty per cent of the amount of overpayment for the first offense and a penalty of one hundred per cent of the amount of overpayment for any subsequent offense. This penalty shall be in addition to the liability to repay the full amount of overpayment and shall not be confined to a single benefit year. Thirty-five per cent of any such penalty shall be paid into the Unemployment Compensation Trust Fund and sixty-five per cent of such penalty shall be paid into the Employment Security Administration Fund. The penalty amounts computed in this subparagraph shall be rounded to the nearest dollar with fractions of a

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dollar of exactly fifty cents rounded upward.

(3) Any person charged with the fraudulent receipt of benefits or the making of a fraudulent claim, as provided in this subsection, shall be entitled to a hearing before the administrator, or a deputy or representative designated by the administrator. Notice of the time and place of such hearing, and the reasons for such hearing, shall be given to the person not less than five days prior to the date appointed for such hearing. The administrator shall determine, on the basis of facts found by the administrator, whether or not a fraudulent act subject to the penalties of this subsection has been committed and, upon such finding, shall fix the penalty for any such offense according to the provisions of this subsection. Any person determined by the administrator to have committed fraud under the provisions of this section shall be liable for repayment to the administrator of the Unemployment Compensation Fund for any benefits determined by the administrator to have been collected fraudulently, as well as any other penalties assessed by the administrator in accordance with the provisions of this subsection. Until such liabilities have been met to the satisfaction of the administrator, such person shall forfeit any right to receive benefits under the provisions of this chapter. Notification of such decision and penalty shall be mailed to such person's last known address and shall be final unless such person files an appeal not later than twenty-one days after the mailing date of such notification, except that (A) any such appeal that is filed after such twenty-one-day period may be considered to be timely filed if the filing party shows good cause, as defined in regulations adopted pursuant to section 31-249h, for the late filing, (B) if the last day for filing an appeal falls on any day when the offices of the Employment Security Division are not open for business, such last day shall be extended to the next business day, and (C) if any such appeal is filed by mail, the appeal shall be considered timely filed if the appeal was received within such twenty-one-day period or bears a legible United States postal service postmark that

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indicates that within such twenty-one-day period the appeal was placed in the possession of postal authorities for delivery to the appropriate office. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. Such appeal shall be heard by a referee in the same manner provided in section 31-242 for an appeal from the decision of an examiner on a claim for benefits. The manner in which such appeals shall be heard and appeals taken therefrom to the board of review and then to the Superior Court, either by the administrator or the claimant, shall be in accordance with the provisions set forth in section 31-249 or 31-249b, as the case may be. Any determination of overpayment made under this subsection which becomes final on or after October 1, 1995, may be enforced in the same manner as a judgment of the Superior Court when the claimant fails to pay according to the claimant's repayment schedule. The court may issue execution upon any final determination of overpayment in the same manner as in cases of judgments rendered in the Superior Court; and upon the filing of an application to the court for an execution, the administrator shall send to the clerk of the court a certified copy of such determination.

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

(d) If, after investigation, the administrator determines that there is probable cause to believe that the person, firm or corporation has wilfully failed to declare payment of wages in the payroll record, the administrator shall provide an opportunity for a hearing on the matter. If a hearing is requested, it shall be conducted by the administrator, or a deputy or representative designated by him. Notice of the time and place of such hearing, and the reasons therefor, shall be given to the person, firm, or corporation not less than five days prior to the date appointed for such hearing. If the administrator determines, on the

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basis of the facts found by him, that such nondeclaration occurred and was wilful, the administrator shall fix the payments and penalties in accordance with the provisions of subsection (e) of this section. Such person, firm or corporation may appeal to the superior court for the judicial district of Hartford or for the judicial district in which the employer's principal place of business is located. Such court shall give notice of a time and place of hearing to the administrator. At such hearing the court may confirm or correct the administrator's determination. If the administrator's determination is confirmed, the cost of such proceedings, as in civil actions, shall be assessed against such person, firm or corporation. No costs shall be assessed against the state on such appeal.

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

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

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

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

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

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

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

(k) For any determination of an overpayment made on or after

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October 1, 2013, if the administrator determines that an overpayment was caused by an employer's failure to timely or adequately respond to the administrator's request for information relating to a claim in a manner prescribed by the administrator, such employer shall not be relieved of its proportionate share of charges for each week determined to be overpaid.

Sec. 2. Section 31-241 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) The administrator, or a deputy or representative designated by him and hereinafter referred to as an examiner, shall promptly examine the initiating claim and, on the basis of the facts found by him, shall determine whether or not such claim is valid and, if valid, the weekly amount of benefits payable and the maximum possible duration thereof. He shall promptly notify the claimant of the decision and the reasons therefor, which notification shall set forth the provision of this section for appeal. The administrator or an examiner shall promptly examine each claim for a benefit payment for a week of unemployment and, on the basis of the facts found by him, shall determine whether or not the claimant is eligible to receive such benefit payment for such week and the amount of benefits payable for such week. The determination of eligibility by the administrator or an examiner shall be based upon evidence or testimony presented in such a manner as the administrator shall prescribe, including in writing, by telephone or by other electronic means at a hearing called for such purpose. The administrator or an examiner may prescribe an in person hearing at his or her discretion, provided if an in person hearing is requested, the request may not be unreasonably denied by the administrator or an examiner, as the case may be. Notice of the decision and the reasons therefor shall be given to the claimant. The employers against whose accounts charges may be made due to any benefits awarded by the decision shall be notified of the initial

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determination of the claimant's benefit entitlement at the time notice is given to the claimant, which notification shall set forth the provisions of this section for appeal, provided any employer who claims that the claimant is ineligible for benefits because his unemployment is due to the existence of a labor dispute at such employer's factory, establishment or other premises, shall be notified of the decision and the reasons therefor, whether or not benefits awarded by the decision might be charged against such employer's account. The employer's appeal rights shall be limited to the first notice he is given in connection with a claim which sets forth his appeal rights, and no issue may be appealed if notice of such issue and the right to appeal such issue had previously been given. [Notwithstanding] For any determination of an overpayment made prior to October 1, 2013, notwithstanding any provisions of this chapter to the contrary, whenever the employer, after receiving notice of such hearing, fails to appear at the hearing or fails to timely submit a written response in a manner prescribed by the administrator, such employer's proportionate share of benefits paid to the claimant prior to the issuance of a decision by a referee under section 31-242 for any week beginning prior to the forty-second day after the end of the calendar week in which the employer's appeal was filed shall be charged against such employer's account and the claimant shall not be charged with an overpayment with respect to such benefits pursuant to subsection (a) of section 31-273. For any determination of an overpayment made on or after October 1, 2013, notwithstanding any provisions of this chapter to the contrary, whenever the employer, after receiving notice of such hearing, fails to appear at the hearing or fails to submit a timely and adequate written response in a manner prescribed by the administrator, such employer's proportionate share of benefits paid to the claimant prior to the issuance of a decision by a referee under section 31-242 or the Employment Security Board of Review under section 31-249a shall be charged against such employer's account. The decision of the administrator shall be final and benefits

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shall be paid or denied in accordance therewith unless the claimant or any of such employers, within twenty-one calendar days after such notification was mailed to his last-known address, files an appeal from such decision and applies for a hearing, provided (1) any such appeal which is filed after such twenty-one-day period may be considered to be timely filed if the filing party shows good cause, as defined in regulations adopted pursuant to section 31-249h, for the late filing, (2) if the last day for filing an appeal falls on any day when the offices of the Employment Security Division are not open for business, such last day shall be extended to the next business day, and (3) if any such appeal is filed by mail, such appeal shall be considered timely filed if it was received within such twenty-one-day period or bears a legible United States postal service postmark which indicates that within such twenty-one-day period it was placed in the possession of such postal authorities for delivery to the appropriate office. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. Where the administrator or examiner has determined that the claimant is eligible for benefits, benefits shall be paid promptly in accordance with the determination regardless of the pendency of the period to file an appeal or the pendency of such appeal. No examiner shall participate in any case in which he is an interested party. Any person who has filed a claim for benefits pursuant to an agreement entered into by the administrator with the proper agency under the laws of the United States, whereby the administrator makes payment of unemployment compensation out of funds supplied by the United States, may in like manner file an appeal from the decision of such claim and apply for a hearing, and the United States or the agency thereof which had employed such person may in like manner appeal from the decision on such claim and apply for a hearing.

(b) The administrator shall adopt regulations, in accordance with the provisions of section 31-244 and chapter 54, effective July 1, 1992,

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establishing procedures and guidelines necessary to implement the provisions of this section. Such regulations shall prescribe a minimum number of days of advance notice to be afforded parties prior to a hearing and standards for determining the timeliness of written responses to hearing notices.

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

(h) (1) With respect to each benefit year commencing on or after July 1, 1978, notice of determination of the claimant's benefit entitlement for such benefit year shall include notice of the allocation of benefit charges of the claimant's base period employers and each such employer shall be mailed a copy of such notice of determination and shall be an interested party thereto. Such determination shall be final unless the claimant or any of such employers files an appeal from such decision in accordance with the provisions of section 31-241, as amended by this act. (2) The administrator shall, not less frequently than once each calendar quarter, mail a statement of charges to each employer to whose experience record any charges have been made since the last previous such statement. Such statement shall show, with respect to each week for which benefits have been paid and charged, the name and Social Security account number of the claimant who was paid the benefit, the amount of the benefits charged for such week and the total amount charged in the quarter. (3) The statement of charges provided for in subdivision (2) of this subsection shall constitute notice to the employer that it has been determined that the benefits reported in such statement were properly payable under this chapter to the claimants for the weeks and in the amounts shown in such statements. If the employer contends that benefits have been improperly charged due to fraud or error, a written protest setting forth reasons therefor shall be filed with the administrator within sixty days of the mailing

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date of the quarterly statement. An eligibility issue shall not be reopened on the basis of such quarterly statement if notification of such eligibility issue had previously been given to the employer under the provisions of section 31-241, as amended by this act, and he failed to file a timely appeal therefrom or had the issue finally resolved against him. (4) The provisions of subdivisions (2) and (3) of this subsection shall not apply to combined wage claims paid under subsection (b) of section 31-255. For such combined wage claims paid under the unemployment law of other states, the administrator shall, each calendar quarter, mail a statement of charges to each employer whose experience record has been charged since the previous such statement. Such statement shall show the name and Social Security number of the claimant who was paid the benefits and the total amount of the benefits charged in the quarter.

Sec. 4. Section 31-274j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) As used in this section, "administrator" means the Labor Commissioner in his capacity as administrator of unemployment compensation under this chapter.

(b) Notwithstanding any provision of this chapter to the contrary, the administrator shall establish a voluntary shared work unemployment compensation program allowing participating employees to collect unemployment compensation benefits if the employees work a reduced number of hours per week with a corresponding reduction in wages under a shared work plan submitted by [a contributing] an employer subject to the provisions of this chapter and approved by the administrator.

(c) The administrator shall adopt regulations, in accordance with the provisions of chapter 54, to establish requirements for and administer the shared work unemployment compensation program.

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(d) In the event of any conflict between any provision of this section, or of the regulations implemented pursuant to this section, and applicable federal law, the federal law shall prevail and such provision shall be deemed invalid or ineffective.

Approved June 3, 2013