

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT
SENATE BILL NO. 1968
(Second Reprint)

August 23, 2010

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1968 (Second Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill seeks to prevent certain abuses in the unemployment insurance ("UI") system, such as the improper delay or denial of UI benefits to eligible claimants. The bill would increase the amount of time for a claimant or other interested party to appeal a benefit determination before the board of review, other than an initial determination, from 10 days to 20 days after the date of notification or mailing of such decision for any decision made after December 1, 2010. Moreover, the bill provides for the registration and regulation of authorized agents, including agents representing employers, in UI claims. The bill further provides that an individual who receives an overpayment of benefits for any reason other than fraudulent or knowing nondisclosure or misrepresentation or because the person has been found, after a prior determination, to have become ineligible for part or all of the benefits, is not liable for any overpayment that occurred before the finding of the overpayment.

B. Recommended Action

I agree that individuals who are eligible for UI benefits should be further protected from abuse and undue delay by increasing oversight on the authorized agents who provide representation to parties in connection with claims for unemployment benefits. I do not, however, support the provisions of this bill that would mandate the wholesale elimination of the discretion of the Department of Labor &

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Workforce Development (the "Department") to determine whether to grant a claimant a waiver of recovery of an overpayment of benefits for certain non-fraudulent claims.

The fact that a claim is not fraudulent should not be the basis for automatically allowing claimants to retain funds they were not legally entitled to receive in the first place. Under current law, a claimant who receives an overpayment of benefits in error is liable for the amount of the overpayment subject to his or her right to present a hardship claim to the Department. I am not persuaded that there is a compelling reason to change this aspect of the law.

It would be imprudent to take away the Department's ability to determine whether a claim for repayment should be pursued or waived based on a finding that an economic or other hardship exists. This is particularly true given the financial condition of the unemployment insurance fund, which at present is approximately \$1.75 billion in debt. The Department estimates that this proposed change in the law would exempt approximately \$28 million annually from any evaluation by the State regarding whether these overpayments can or should be repaid by the individuals who received them in error. The State's policy should be to preserve funds for all eligible claimants by, in appropriate circumstances, seeking to recover funds for claims that were overpaid.

Further, state benefit recoupment provisions must be consistent with federal law. Federal law requires that a state recover improperly paid unemployment benefits. Limiting the State's recoupment of improperly paid unemployment benefits to cases solely involving the fraudulent receipt of benefits could result in a determination by the United States Secretary of Labor that the State is not in compliance with federal law and

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the loss of federal funds to administer the State's unemployment insurance program.

I recognize that there will be times when a claimant will not be able to repay the overpayment of unemployment benefits due to a hardship -- economic or otherwise. These claimants are amply protected under existing regulations. The Director of the Division of Unemployment & Temporary Disability Insurance of the New Jersey Department of Labor & Workforce Development presently has discretion to determine whether to waive the recovery of an overpayment of benefits on a case-by-case basis. Under these regulations, upon the request of the claimant or the claimant's representative, the Director may waive recovery of an overpayment of benefits for non-fraudulent claims in circumstances where the claimant is deceased, where the claimant is disabled and no longer able to work, and in other compelling circumstances.

The current law strikes an appropriate balance between the State's interest in protecting the assets of the UI fund for all New Jersey citizens who qualify for such benefits and its interest in ensuring that a fair mechanism exists to protect individuals from harsh repayment obligations when facing a legitimate economic or other hardship. Therefore, I recommend deleting the provisions of the bill that would require the Department to permit individuals who received an overpayment of benefits for any reason other than for fraud to keep the payments automatically.

Accordingly, I herewith return Senate Bill No. 1968 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Lines 42-43:

Delete ", or refund liability
for resulting benefit
overpayments prior to the
receipt of the employer's
reply,"

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Page 8, Section 2, Line 39:

After "[whether (i)]" insert
"whether (i)"

Page 8, Section 2, Line 40:

Delete "fraudulent or
knowing"

Page 8, Section 2, Lines 41-43:

After "[whether or not such
nondisclosure or
misrepresentation was known
or fraudulent), or (ii) for
any other reason]" insert
"(whether or not such
nondisclosure or
misrepresentation was known
or fraudulent), or (ii) for
any other reason"

Page 9, Section 2, Lines 2-8:

Delete "If the representative
finds that the person
received an overpayment of
benefits for any reason other
than fraudulent or knowing
nondisclosure or
misrepresentation or because
the person has been found,
after a prior determination,
to have become ineligible for
part or all of the benefits,
the person shall not be
liable for any overpayment
which occurred before the
finding of the overpayment."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor