S T A T E O F N E W Y O R K

4053

2009-2010 Regular Sessions

I N S E N A T E

April 8, 2009

Introduced by Sen. MONSERRATE -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to increasing unemployment insurance benefits; to amend chapter 831 of the laws of 1981 amending the labor law relating to fees and expenses in unemployment insurance proceedings, in relation to the effectiveness thereof; to amend the labor law, in relation to non-recoverable benefits; and to repeal subdivision 11 of section 590 of the labor law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 5 of section 590 of the labor law, as amended by chapter 413 of the laws of 2003, is amended to read as follows:

5. Benefit rate. A claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, liable for contributions or payments in lieu of contributions under this article. However, for claimants whose high calendar quarter remuneration during the base period is [three thousand five hundred seventy-five] EIGHT THOUSAND dollars or less, the benefit amount shall be [one twenty-fifth] ONE TWENTY-SECOND of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. Any claimant whose high calendar quarter remuneration during the base period is more than three thousand five hundred seventy-five dollars shall not have a weekly benefit amount less than one hundred forty-three dollars. The weekly benefit amount, so computed, that is not a multiple of one dollar shall be [lowered to] the next multiple of one dollar. On the first Monday of September, nineteen hundred ninety-eight the weekly benefit amount shall not exceed three hundred sixty-five dollars nor be less than forty dollars, until the first Monday of September, two thousand, at which time the maximum benefit payable pursuant to this subdivision shall equal one-half of the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07388-02-9

state average weekly wage for covered employment as calculated by the department no sooner than July first, two thousand and no later than August first, two thousand, rounded [down] to the [lowest] NEXT dollar. ON THE FIRST MONDAY OF JULY, TWO THOUSAND NINE, THE WEEKLY BENEFIT SHALL NOT EXCEED FOUR HUNDRED SEVENTY-FIVE DOLLARS NOR LESS THAN SEVENTY-FIVE DOLLARS, UNTIL THE FIRST MONDAY OF JULY, TWO THOUSAND TEN AT WHICH TIME THE WEEKLY BENEFIT SHALL NOT EXCEED FIVE HUNDRED TWENTY-FIVE DOLLARS, UNTIL THE FIRST MONDAY OF JULY, TWO THOUSAND ELEVEN AT WHICH TIME THE MAXIMUM WEEKLY BENEFIT SHALL NOT EXCEED FIVE HUNDRED SEVENTY-FIVE DOLLARS, UNTIL THE FIRST MONDAY OF JULY, TWO THOUSAND TWELVE, AT WHICH TIME THE MAXIMUM WEEKLY BENEFIT SHALL NOT EXCEED SIX HUNDRED TWENTY-FIVE DOLLARS UNTIL THE FIRST MONDAY OF JULY, TWO THOUSAND THIRTEEN, AT WHICH TIME THE MAXIMUM WEEKLY BENEFIT PURSUANT TO THIS SUBDIVISION SHALL EQUAL ONE-HALF OF THE STATE AVERAGE WEEKLY WAGE AS CALCULATED BY THE DEPARTMENT NO SOONER THAN JULY FIRST, TWO THOUSAND THIRTEEN AND NOT LATER THAN AUGUST FIRST, TWO THOUSAND THIRTEEN AND ON JULY FIRST OF EACH SUCCEEDING YEAR THE MAXIMUM BENEFIT SHALL EQUAL ONE-HALF OF THE STATE AVERAGE WEEKLY WAGE AS CALCULATED BY THE DEPARTMENT ANNUALLY PURSUANT TO THE MANNER DESCRIBED IN THIS SUBDIVISION.

S 2. Paragraph (a) of subdivision 1 of section 518 of the labor law, as amended by chapter 589 of the laws of 1998, is amended to read as follows:

(a) "Wages" means all remuneration paid, except that such term does not include remuneration paid to an employee by an employer after [eight thousand five hundred] NINE THOUSAND SEVEN HUNDRED FIFTY dollars have been paid to such employee by such employer with respect to employment during any calendar year PRECEDING THE FIRST DAY OF JANUARY, TWO THOUSAND TEN, NOR TO INCLUDE REMUNERATION PAID TO AN EMPLOYEE BY AN EMPLOYER AFTER ELEVEN THOUSAND FIVE HUNDRED DOLLARS HAVE BEEN PAID TO SUCH EMPLOYEE BY SUCH EMPLOYER WITH RESPECT TO EMPLOYMENT DURING ANY CALENDAR YEAR PRECEDING THE FIRST DAY OF JANUARY, TWO THOUSAND ELEVEN, NOR TO INCLUDE REMUNERATION PAID TO AN EMPLOYEE BY AN EMPLOYER AFTER THIRTEEN THOUSAND DOLLARS HAVE BEEN PAID TO SUCH EMPLOYEE BY SUCH EMPLOYER WITH RESPECT TO EMPLOYMENT DURING ANY CALENDAR YEAR PRECEDING THE FIRST DAY OF JANUARY, TWO THOUSAND TWELVE, NOR TO INCLUDE REMUNERATION PAID TO AN EMPLOYEE BY AN EMPLOYER AFTER FIFTEEN THOUSAND DOLLARS HAVE BEEN PAID TO SUCH EMPLOYEE BY SUCH EMPLOYER WITH RESPECT TO EMPLOYMENT DURING ANY CALENDAR YEAR PRECEDING THE FIRST DAY OF JANUARY, TWO THOUSAND THIRTEEN. IN EACH SUCCEEDING CALENDAR YEAR, THE DEPARTMENT SHALL CALCULATE THE BASE AMOUNT OF REMUNERATION NECESSARY FROM WHICH TO PRODUCE SUFFICIENT PREMIUM TO PROVIDE FOR THE ANNUAL INCREASES IN MAXIMUM WEEKLY BENEFIT PROVIDED FOR IN THIS ARTICLE, AND OTHER FUNDING FOR THE UNEMPLOYMENT INSURANCE TRUST FUND PURSUANT TO SECTION FIVE HUNDRED FIFTY OF THIS ARTICLE, AS MAY BE NECESSARY. The term "employment" includes for the purposes of this subdivision services constituting employment under any unemployment compensation law of another state or the United States.

S 3. Subdivision 1 of section 593 of the labor law, as amended by chapter 415 of the laws of 1983, paragraph (a) as amended by chapter 268 of the laws of 1999 and paragraph (b) as amended by chapter 589 of the laws of 1998, is amended to read as follows:

1. Voluntary separation. [(a)] No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and earned remuneration at least equal to five times his or her weekly benefit rate. [In addition to other circumstances that may be found to constitute good cause, voluntary separation from employment

shall not in itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision two of this section or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

A voluntary separation may also be deemed for good cause if it occurred as a consequence of circumstances directly resulting from the claimant being a victim of domestic violence.

(b) A disqualification as provided in this subdivision shall also apply after a claimant's voluntary separation from employment if such voluntary separation was due to claimant's marriage.]

S 4. Subdivision 11 of section 590 of the labor law is REPEALED.

S 5. Subdivision 10 of section 590 of the labor law, as amended by chapter 589 of the laws of 1998, the opening paragraph as amended by chapter 734 of the laws of 2004, paragraph (c) as amended by chapter 102 of the laws of 2002, is amended to read as follows:

10. Benefits based on professional AND NON-PROFESSIONAL employment with educational institutions, including the state university of New York, the city university of New York and any public community colleges. If a claimant was employed in an instructional, research, or principal administrative capacity by an institution of education, including the state university of New York, the city university of New York and any public community colleges, or performed services in such an institution in such capacity while employed by an educational service agency, the following shall apply to any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms when the contract provides therefor instead, provided the claimant has a contract to perform[, or there is a reasonable assurance that the claimant will perform], services in such capacity for any such institution or institutions for both of such academic years or such terms, and to any week commencing during an established and customary vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday recess and there is a reasonable assurance that the claimant will perform any services described in this subdivision [or subdivision eleven of this section] in the period immediately following such vacation period or holiday recess:

(a) In the case of a claimant who has no current benefit year, whether the claimant meets the conditions of section five hundred twenty-seven OF THIS ARTICLE in any such week shall be determined by disregarding the remuneration paid for such employment.

(b) In the case of a claimant who does have a current benefit year, no benefits shall be payable with respect to any such week provided the claimant would not have met the conditions of section five hundred twenty-seven OF THIS ARTICLE in the week in which the claimant filed a valid original claim if the remuneration paid for such employment is disregarded.

(c) The benefit rate of a claimant with respect to any such week shall be determined or redetermined by disregarding the remuneration paid for such employment.

"Educational service agency" means a governmental agency or governmental entity or Indian tribal entity which is established and operated exclusively for the purpose of providing to one or more educational institutions services mentioned under this subdivision [or subdivision eleven of this section].

For purposes of this subdivision [or subdivision eleven of this section], "educational institution" shall include any not-for-profit community art school which is chartered as a school by the board of regents of the university of state of New York.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR THE PURPOSES OF THIS SUBDIVISION, AN OFFER OF EMPLOYMENT OR ASSIGNMENT MADE TO A PART-TIME FACULTY EMPLOYEE BY A HIGHER EDUCATION INSTITUTION, WHICH OFFER IS CONTINGENT ON ENROLLMENT, FUNDING, OR PROGRAMMATIC CHANGES WILL NOT BE PRESUMED TO BE REASONABLE ASSURANCE. REASONABLE ASSURANCE MUST BE DETERMINED ON A CASE-BY-CASE BASIS BY THE TOTAL WEIGHT OF EVIDENCE RATHER THAN THE EXISTENCE OF ANY ONE FACTOR. PRIMARY WEIGHT MUST BE GIVEN TO THE CONTINGENT NATURE OF AN OFFER OF EMPLOYMENT BASED ON ENROLLMENT, FUNDING, AND PROGRAM CHANGES. PROVIDED, HOWEVER, THAT IN ANY UNEMPLOYMENT INSURANCE PROCEEDING A WRITTEN LETTER FROM AN EMPLOYER TO AN EMPLOYEE WHICH MAKES EMPLOYMENT CONDITIONAL SHALL NOT BE PRIMA FACIE EVIDENCE OF REASONABLE ASSURANCE TO BE USED TO DENY A CLAIM FOR UNEMPLOYMENT INSURANCE.

S 6. Section 599 of the labor law, as amended by chapter 593 of the laws of 1991, is amended to read as follows:

S 599. Career and related training; preservation of eligibility. 1. Notwithstanding any other provision of this article, a claimant shall not become ineligible for benefits because of the claimant's regular attendance in a program of training which the commissioner has approved. The commissioner shall give due consideration to existing and prospective conditions of the labor market in the state, taking into account present and anticipated supply and demand regarding the occupation or skill to which the training relates, and to any other relevant factor. A DETERMINATION OF POTENTIAL ELIGIBILITY FOR BENEFITS UNDER THIS ARTICLE SHALL BE ISSUED TO AN UNEMPLOYED INDIVIDUAL IF THE COMMISSIONER FINDS THAT THE TRAINING IS AUTHORIZED BY THE FEDERAL WORKFORCE INVESTMENT ACT, THE STATE DIVISION OF VETERANS' AFFAIRS, THE DEPARTMENT, THE NEW YORK STATE DEPARTMENTS OF EDUCATION, CORRECTIONAL SERVICES, HEALTH, OR THE OFFICE OF MENTAL HEALTH, THE EMPIRE STATE DEVELOPMENT CORPORATION, OR THE STATE UNIVERSITY OF NEW YORK EDUCATIONAL OPPORTUNITY CENTER. However, in no event shall the commissioner approve [such] training for a claimant NOT AUTHORIZED BY SUCH LEGISLATIVE ACT OR STATE OR QUASI-STATE ENTITY LISTED ABOVE unless:

(a) (1) the training will upgrade the claimant's existing skill or train the claimant for an occupation likely to lead to more regular long term employment; ENABLE THE CLAIMANT TO OBTAIN EMPLOYMENT THAT ACHIEVES WAGE PRESERVATION OR MAKES PROGRESS TOWARD A FAMILY-SUSTAINING WAGE; or

(2) employment opportunities for the claimant are or may be substantially impaired because of:

(i) existing or prospective conditions of the labor market in the locality or in the state or reduced opportunities for employment in the claimant's occupation or skill; or

(ii) technological change, plant closing or plant removal, discontinuance of specific plant operations, or similar reasons; or

(iii) limited opportunities for employment throughout the year due to the seasonal nature of the industry in which the claimant is customarily employed; or

(iv) the claimant's personal traits such as physical or mental handicap; and

(b) the training, INCLUDING REMEDIAL EDUCATION WHICH IS INTEGRAL TO CAREER ADVANCEMENT OR REQUIRED FOR COMPLETING CAREER-RELATED TRAINING, relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the state; and

(c) the training is offered by a competent and reliable agency and does not require more than twenty-four months to complete; and

(d) the claimant has the required qualifications and aptitudes to complete the training successfully.

2. (a) Notwithstanding any other provision of this chapter, a claimant attending an approved training course or program under this section may receive additional benefits of up to one hundred four effective days following exhaustion of regular and, if in effect, any other extended benefits, provided that entitlement to a new benefit claim cannot be established. Certification of continued satisfactory participation and progress in such training course or program must be submitted to the commissioner prior to the payment of any such benefits. [The duration of such additional benefits shall in no case exceed twice the number of effective days of regular benefits to which the claimant is entitled at the time the claimant is accepted in, or demonstrates application for appropriate training.] ANY UNEMPLOYED INDIVIDUAL RECEIVING UNEMPLOYMENT INSURANCE BENEFITS PAYABLE UNDER THIS SUBDIVISION, WHO NOTIFIES THE DEPARTMENT WITH THE INTENT TO SEEK TRAINING OPPORTUNITIES UNDER THIS ARTICLE NO LATER THAN THE SIXTEENTH WEEK OF HIS OR HER RECEIVING BENEFITS, AND IS DETERMINED ELIGIBLE FOR BENEFITS UNDER THIS ARTICLE, IS ENTITLED TO A TRAINING EXTENSION OF THE FULL ONE HUNDRED FOUR EFFECTIVE DAYS ON HIS OR HER UNEMPLOYMENT COMPENSATION CLAIM, IF NECESSARY, TO COMPLETE APPROVED TRAINING.

(b) No more than [twenty] FIFTY million dollars of benefits per year shall be made available for payment to claimants participating in such courses or programs.

(c) Participation in such training course or program shall not be limited to any selected areas or localities of the state but subject to the availability of funds, shall be available to any claimant otherwise eligible to participate in training courses or programs pursuant to this section.

(d) The additional benefits paid to a claimant shall be charged to the general account.

3. Notwithstanding any other provision of this article, a claimant who is in training approved under the federal trade act of nineteen hundred seventy-four shall not be disqualified or become ineligible for benefits because he OR SHE is in such training or because he OR SHE left employment which is not suitable employment to enter such training. For purposes hereof, "suitable employment" means work of a substantially equal or higher skill level than the claimant's past adversely affected employment and for which the remuneration is not less than eighty percent of the claimant's average weekly wage.

S 7. Section 3 of chapter 831 of the laws of 1981, amending the labor law relating to fees and expenses in unemployment insurance proceedings, as amended by chapter 634 of the laws of 2008, is amended to read as follows:

S 3. This act shall take effect January 1, 1982, provided, however, that paragraphs (a) and (c) of subdivision 3 of section 538 of the labor

law as added by section one of this act shall remain in full force and effect until December 31, [2010] 2012.

S 8. Article 18 of the labor law is amended by adding a new title 7-B to read as follows:

TITLE 7-B

UNEMPLOYMENT INSURANCE FOR DOMESTIC VIOLENCE SURVIVORS

SECTION 615. DEFINITIONS.
616. ELIGIBILITY FOR UNEMPLOYMENT INSURANCE FOR DOMESTIC VIOLENCE SURVIVORS.
617. TRAINING PROGRAM.

S 615. DEFINITIONS. FOR PURPOSES OF THIS TITLE:

1. "DOMESTIC VIOLENCE" MEANS ABUSE COMMITTED AGAINST AN EMPLOYEE OR AN EMPLOYEE'S DEPENDENT CHILD BY:

(A) A CURRENT OR FORMER SPOUSE OF THE EMPLOYEE; OR

(B) A PERSON WITH WHOM THE EMPLOYEE SHARES PARENTAGE OF A CHILD IN COMMON; OR

(C) A PERSON WHO IS COHABITATING WITH, OR HAS COHABITATED WITH, THE EMPLOYEE; OR

(D) A PERSON WHO IS RELATED BY BLOOD OR MARRIAGE; OR

(E) A PERSON WITH WHOM THE EMPLOYEE HAS OR HAD A DATING OR ENGAGEMENT RELATIONSHIP.

2. "ABUSE" MEANS:

(A) CAUSING, OR ATTEMPTING TO CAUSE, PHYSICAL HARM; OR

(B) PLACING ANOTHER PERSON IN FEAR OF IMMINENT SERIOUS PHYSICAL HARM; OR

(C) CAUSING ANOTHER PERSON TO ENGAGE INVOLUNTARILY IN SEXUAL RELATIONS BY FORCE, THREAT OR DURESS, OR THREATENING TO DO SO; OR

(D) ENGAGING IN MENTAL ABUSE, WHICH INCLUDES THREATS, INTIMIDATION, STALKING AND ACTS DESIGNED TO INDUCE TERROR; OR

(E) DEPRIVING ANOTHER PERSON OF MEDICAL CARE, HOUSING, FOOD OR OTHER NECESSITIES OF LIFE; OR

(F) RESTRAINING THE LIBERTY OF ANOTHER.

S 616. ELIGIBILITY FOR UNEMPLOYMENT INSURANCE FOR DOMESTIC VIOLENCE SURVIVORS. 1. A CLAIMANT SHALL NOT BE DISQUALIFIED FROM RECEIVING UNEMPLOYMENT INSURANCE BENEFITS IF THE CLAIMANT ESTABLISHES TO THE SATISFACTION OF THE COMMISSIONER THAT THE REASON THE CLAIMANT LEFT WORK WAS DUE TO DOMESTIC VIOLENCE, INCLUDING:

(A) THE CLAIMANT'S REASONABLE FEAR OF FUTURE DOMESTIC VIOLENCE AT OR EN ROUTE TO OR FROM THE CLAIMANT'S PLACE OF EMPLOYMENT.

(B) THE CLAIMANT'S NEED TO RELOCATE TO ANOTHER GEOGRAPHIC AREA IN ORDER TO AVOID FUTURE DOMESTIC VIOLENCE.

(C) THE CLAIMANT'S NEED TO ADDRESS THE PHYSICAL, PSYCHOLOGICAL AND LEGAL IMPACTS OF DOMESTIC VIOLENCE.

(D) THE CLAIMANT'S NEED TO LEAVE EMPLOYMENT AS A CONDITION OF RECEIVING SERVICES OR SHELTER FROM AN AGENCY WHICH PROVIDES SUPPORT SERVICES OR SHELTER TO VICTIMS OF DOMESTIC VIOLENCE.

(E) ANY OTHER SITUATION IN WHICH DOMESTIC VIOLENCE CAUSES THE CLAIMANT TO REASONABLY BELIEVE THAT TERMINATION OF EMPLOYMENT IS NECESSARY FOR THE FUTURE SAFETY OF THE CLAIMANT OR THE CLAIMANT'S FAMILY.

2. A CLAIMANT MAY DEMONSTRATE THE EXISTENCE OF DOMESTIC VIOLENCE BY PROVIDING ONE OF THE FOLLOWING:

(A) A RESTRAINING ORDER OR OTHER DOCUMENTATION OF EQUITABLE RELIEF ISSUED BY A COURT OF COMPETENT JURISDICTION;

(B) A POLICE RECORD DOCUMENTING THE ABUSE;

(C) DOCUMENTATION THAT THE ABUSER HAS BEEN CONVICTED OF ONE OR MORE CRIMINAL OFFENSES ENUMERATED IN THE PENAL LAW AGAINST THE CLAIMANT;

(D) MEDICAL DOCUMENTATION OF THE ABUSE;

(E) A STATEMENT PROVIDED BY A COUNSELOR, SOCIAL WORKER, HEALTH WORKER, MEMBER OF THE CLERGY, SHELTER WORKER, LEGAL ADVOCATE, OR OTHER PROFESSIONAL WHO HAS ASSISTED THE CLAIMANT IN ADDRESSING THE EFFECTS OF THE ABUSE ON THE CLAIMANT OR THE CLAIMANT'S FAMILY; OR

(F) A SWORN STATEMENT FROM THE CLAIMANT ATTESTING TO THE ABUSE.

3. NO EVIDENCE OF DOMESTIC VIOLENCE EXPERIENCED BY A CLAIMANT, INCLUDING THE CLAIMANT'S STATEMENT AND CORROBORATING EVIDENCE, SHALL BE DISCLOSED BY THE DEPARTMENT UNLESS CONSENT FOR DISCLOSURE IS GIVEN BY THE CLAIMANT.

4. FOR A CLAIMANT WHO LEFT WORK DUE TO DOMESTIC VIOLENCE, REQUIREMENTS TO PURSUE SUITABLE WORK MUST REASONABLY ACCOMMODATE THE CLAIMANT'S NEED TO ADDRESS THE PHYSICAL, PSYCHOLOGICAL, LEGAL AND OTHER EFFECTS OF THE DOMESTIC VIOLENCE.

S 617. TRAINING PROGRAM. 1. THE COMMISSIONER SHALL IMPLEMENT A TRAINING CURRICULUM FOR EMPLOYEES OF THE DEPARTMENT WHO INTERACT WITH CLAIMANTS APPLYING FOR UNEMPLOYMENT INSURANCE DUE TO THEIR DOMESTIC VIOLENCE STATUS.

2. ALL SENIOR MANAGEMENT PERSONNEL OF THE DEPARTMENT THAT SUPERVISE THE TRAINING OF EMPLOYEES INVOLVED IN HANDLING UNEMPLOYMENT CLAIMS SHALL BE TRAINED IN THIS CURRICULUM NOT LATER THAN SIXTY DAYS FROM THE EFFECTIVE DATE OF THIS TITLE. THE COMMISSIONER SHALL DEVELOP AN ONGOING PLAN FOR EMPLOYEES OF THE DEPARTMENT WHO INTERACT WITH CLAIMANTS TO BE TRAINED IN THE NATURE AND DYNAMICS OF DOMESTIC VIOLENCE, SO THAT EMPLOYMENT SEPARATIONS STEMMING FROM DOMESTIC VIOLENCE ARE RELIABLY SCREENED AND ADJUDICATED, AND SO THAT VICTIMS OF DOMESTIC VIOLENCE ARE ABLE TO TAKE ADVANTAGE OF THE FULL RANGE OF JOB SERVICES PROVIDED BY THE DEPARTMENT.

S 9. Subdivision 1 of section 560 of the labor law, as amended by chapter 103 of the laws of 1965, is amended to read as follows:

1. Liability. Any employer shall become liable for contributions under this article if he has paid remuneration of [three hundred] ONE THOUSAND dollars or more in any calendar quarter, except that liability with respect to persons employed in personal or domestic service in private homes shall be considered separately and an employer shall become liable for contributions with respect to such persons only if he has paid to them remuneration in cash of five hundred dollars or more in any calendar quarter. Such liability for contributions shall commence on the first day of such calendar quarter.

S 10. Paragraph (c) of subdivision 1 of section 538 of the labor law, as amended by chapter 831 of the laws of 1981, is amended to read as follows:

(c) Claims of representatives for services rendered to a claimant in connection with any claim arising under this article shall not be enforceable unless approved by the appeal board and shall in no event exceed the benefit allowed, INCLUDING BENEFITS THAT ARE NON-RECOVERABLE PURSUANT TO SUBDIVISION FOUR OF SECTION FIVE HUNDRED NINETY-SEVEN OF THIS ARTICLE, except as provided in paragraph (d) of this subdivision. In approving any fee requested by a representative pursuant to this section, the appeal board shall consider the following factors: (i) the total benefit allowed; (ii) the time spent in providing representation; (iii) the legal and factual complexities involved; and (iv) such other factors as the appeal board may deem relevant.

S 11. Subdivision 4 of section 597 of the labor law, as amended by chapter 61 of the laws of 1998, is amended to read as follows:

4. Effect of review. Whenever a new determination in accordance with [the preceding] subdivision THREE OF THIS SECTION or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, unless it shall be based upon a retroactive payment of remuneration, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in connection with his or her claim for benefits. NON-RECOVERABLE BENEFITS PURSUANT TO THIS SECTION SHALL BE CONSIDERED TO HAVE BEEN ALLOWED BENEFITS FOR PURPOSES OF SECTION FIVE HUNDRED THIRTY-EIGHT OF THIS ARTICLE.

S 12. This act shall take effect immediately.