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By: **Delegates A. Jones, Nathan-Pulliam, Dobson, Paige, and Cane**  
Introduced and read first time: February 11, 2000  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance - Seasonal Employment**

3 FOR the purpose of restricting benefits to be paid to seasonal employees under the  
4 State unemployment insurance laws; requiring the Secretary to make certain  
5 seasonal determinations based on information provided by an employer  
6 claiming to be a seasonal employer; providing for the effective date of a seasonal  
7 determination and its effect on claims by employees for work outside the  
8 seasonal employment; requiring that a seasonal employer notify its employees of  
9 their seasonal status within a certain time; providing for the effect of a failure to  
10 notify; providing for a redetermination of seasonal status; requiring seasonal  
11 employers to keep certain records and to make certain reports to the Secretary;  
12 allowing an appeal by an employer of a seasonal determination or  
13 redetermination; defining certain terms; and generally relating to claims for  
14 seasonal employment under the State unemployment insurance laws.

15 BY repealing and reenacting, with amendments,  
16 Article - Labor and Employment  
17 Section 8-101  
18 Annotated Code of Maryland  
19 (1999 Replacement Volume)

20 BY adding to  
21 Article - Labor and Employment  
22 Section 8-206(f)  
23 Annotated Code of Maryland  
24 (1999 Replacement Volume)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That the Laws of Maryland read as follows:

**Article - Labor and Employment**

1 8-101.

2 (a) In this title the following words have the meanings indicated.

3 (b) "Base period" means the first 4 of the last 5 completed calendar quarters  
4 immediately preceding the start of the benefit year.

5 (c) "Base period employer" means an employing unit who paid wages to an  
6 individual during the base period of the individual for covered employment.

7 (d) "Benefits" means the money that is payable under this title to an  
8 individual who is unemployed.

9 (e) "Benefit year" means a 1-year period that begins:

10 (1) on the 1st day of the 1st week for which an individual first files a  
11 claim for benefits; or

12 (2) if an individual already has had a benefit year, on the 1st day of the  
13 1st week for which the individual files a claim for benefits after the termination of the  
14 preceding benefit year.

15 (f) "Board of Appeals" means the Board of Appeals of the Department of  
16 Labor, Licensing, and Regulation.

17 (g) "Calendar quarter" means the period of 3 consecutive calendar months  
18 ending on March 31, June 30, September 30, or December 31, except as otherwise  
19 provided by the Secretary by regulation.

20 (h) "Child support" means an obligation that is enforced under a plan that:

21 (1) is described in § 454 of the Social Security Act; and

22 (2) has been approved by the United States Secretary of Health and  
23 Human Services under Part D of Title IV of the Social Security Act.

24 (i) "Child support enforcement unit" means a unit of a state or political  
25 subdivision of a state that operates under a plan that:

26 (1) is described in § 454 of the Social Security Act; and

27 (2) has been approved by the United States Secretary of Health and  
28 Human Services under Part D of Title IV of the Social Security Act.

29 (j) "Claimant" means an individual who submits a claim for benefits.

30 (k) "Contributions" means money required to be paid to the Unemployment  
31 Insurance Fund under § 8-607 of this title.

1 (l) "Covered employment" means work that an individual performs for an  
2 employing unit that is the basis for benefits.

3 (m) "Department" means the Department of Labor, Licensing, and Regulation.

4 (n) (1) "Educational institution" means an institution that offers  
5 participants, students, or trainees an organized course of study or training that is  
6 academic, technical, trade-oriented, or preparatory for gainful employment in a  
7 recognized occupation.

8 (2) "Educational institution" includes an institution of higher education.

9 (o) "Employer" means a person or governmental entity who employs at least 1  
10 individual within the State.

11 (p) "Employing unit" means:

12 (1) an employer that has at least 1 employee engaged in covered  
13 employment for at least part of a day;

14 (2) an employer that has elected to become subject to this title under §  
15 8-203 of this title; or

16 (3) an employer that is not otherwise subject to this title but that:

17 (i) within the current or preceding calendar year, is liable for any  
18 federal tax against which credit may be taken for contributions required to be paid  
19 into a State unemployment fund; or

20 (ii) as a condition for approval for full credit of contributions  
21 against the tax imposed by the Federal Unemployment Tax Act, is required by that  
22 Act to be an employing unit.

23 (q) "Governmental entity" means:

24 (1) a governmental unit as defined in § 1-101 of this article; or

25 (2) an instrumentality of:

26 (i) 1 or more states;

27 (ii) 1 or more political subdivisions of a state; or

28 (iii) 1 or more states and political subdivisions of states.

29 (r) "Hospital" has the meaning stated in § 19-301 of the Health - General  
30 Article.

31 (s) (1) "Institution of higher education" means an educational institution  
32 that:

- 1 (i) is a public or other not for profit institution;
- 2 (ii) is authorized to provide in the State a program of education  
3 beyond high school; and
- 4 (iii) admits as regular students only individuals with a certificate of  
5 graduation from high school or a recognized equivalent certificate for:
- 6 1. training preparatory for employment in a recognized  
7 occupation;
- 8 2. work for credit toward a bachelor's degree; or
- 9 3. postgraduate or postdoctoral study.
- 10 (2) "Institution of higher education" includes each college and university  
11 in the State.
- 12 (t) "Not for profit organization" means an organization that is:
- 13 (1) described in § 501(c)(3) of the Internal Revenue Code; and
- 14 (2) exempt from income tax under § 501(a) of the Internal Revenue Code.
- 15 (U) "SEASONAL DETERMINATION" MEANS A DETERMINATION BY THE  
16 SECRETARY REGARDING:
- 17 (1) THE SEASONAL NATURE OF AN EMPLOYER;
- 18 (2) THE NORMAL SEASONAL PERIOD OR PERIODS OF THE SEASONAL  
19 EMPLOYER COVERED BY DETERMINATION;
- 20 (3) THE STATUS OF THE SEASONAL EMPLOYER'S EMPLOYEES AS  
21 SEASONAL EMPLOYEES; AND
- 22 (4) THE SEASONAL OPERATIONS OF THE SEASONAL EMPLOYER  
23 COVERED BY DETERMINATION.
- 24 (V) "SEASONAL EMPLOYEE" MEANS AN INDIVIDUAL WHO:
- 25 (1) IS EMPLOYED BY A SEASONAL EMPLOYER IN SEASONAL  
26 EMPLOYMENT DURING A REGULARLY RECURRING PERIOD OR PERIODS OF LESS  
27 THAN 16 WEEKS IN A CALENDAR YEAR FOR ALL SEASONAL PERIODS;
- 28 (2) HAS BEEN HIRED FOR A SPECIFIC TEMPORARY PERIOD IN SEASONAL  
29 EMPLOYMENT, AS DETERMINED IN ACCORDANCE WITH § 8-206(F)(2) OF THIS TITLE;  
30 AND
- 31 (3) HAS BEEN NOTIFIED IN WRITING BY THE EMPLOYER OF THE  
32 EMPLOYEE'S SEASONAL STATUS, AS REQUIRED UNDER § 8-206(F)(5) OF THIS TITLE.

1 (W) "SEASONAL EMPLOYER" MEANS AN EMPLOYER THAT:

2 (1) BECAUSE OF CLIMATIC CONDITIONS OR THE NATURE OF THE  
3 PRODUCT OR SERVICE, CUSTOMARILY OPERATES ALL OR A FUNCTIONALLY DISTINCT  
4 OCCUPATION WITHIN ITS BUSINESS ONLY DURING A REGULARLY RECURRING  
5 PERIOD OR PERIODS OF LESS THAN 16 WEEKS FOR ALL SEASONAL PERIODS DURING  
6 A CALENDAR YEAR; AND

7 (2) IS DETERMINED BY THE SECRETARY TO BE A SEASONAL EMPLOYER  
8 UNDER § 8-206(F) OF THIS TITLE.

9 (X) "SEASONAL EMPLOYMENT" MEANS SERVICES PERFORMED FOR WAGES  
10 FOR A SEASONAL EMPLOYER DURING THE SEASONAL PERIOD IN THE EMPLOYER'S  
11 SEASONAL OPERATIONS, AFTER THE EFFECTIVE DATE OF THE SECRETARY'S  
12 DETERMINATION THAT THE EMPLOYER IS A SEASONAL EMPLOYER.

13 [(u)] (Y) "Secretary" means the Secretary of Labor, Licensing, and Regulation.

14 [(v)] (Z) (1) "State" has the meaning stated in § 1-101 of this article.

15 (2) "State" does not include a territory of the United States unless the  
16 territory enacted an unemployment insurance law that complies with the standards  
17 adopted by the Secretary of Labor of the United States under the Federal  
18 Unemployment Tax Act or Title III of the Social Security Act.

19 [(w)] (AA) "Tip" means compensation that:

20 (1) an individual receives from a customer of the individual's employer  
21 while performing covered employment; and

22 (2) is included in a written statement provided to the employer under §  
23 6053(a) of the Internal Revenue Code.

24 [(x)] (BB) (1) "Wages" means all compensation for personal services except as  
25 provided in paragraph (3) of this subsection.

26 (2) "Wages" includes:

27 (i) a bonus;

28 (ii) a commission;

29 (iii) a tip; and

30 (iv) the cash value of all compensation in any medium other than  
31 cash.

32 (3) "Wages" does not include:

33 (i) the amount of any payment made to or on behalf of an employee  
34 or any dependent of an employee under a plan or system established by an employing

1 unit that provides for employees generally or for their dependents or for a class of  
2 employees and their dependents on account of:

3 1. retirement;

4 2. sickness or accident disability payments under a workers'  
5 compensation law;

6 3. medical or hospitalization expenses in connection with  
7 sickness or accident disability;

8 4. a cafeteria plan as defined in 26 U.S.C. § 125, if the  
9 payments would not be treated as wages outside a cafeteria plan;

10 5. dependent care assistance to the extent that the  
11 assistance payments would be excludable from gross income under the provisions of  
12 26 U.S.C. § 127 or § 129; or

13 6. death;

14 (ii) any amount that an employing unit pays for insurance or an  
15 annuity or into a fund to provide for a payment described in item (i) of this paragraph;

16 (iii) any payment on account of sickness or accident disability or  
17 medical or hospitalization expenses in connection with sickness or accident disability  
18 made by the employing unit to or on behalf of an employee at least 6 calendar months  
19 after the last calendar month in which the employee worked for the employing unit;

20 (iv) any payment made to or on behalf of an employee or beneficiary  
21 of the employee:

22 1. from or to a trust exempt from tax under § 401(a) of the  
23 Internal Revenue Code at the time of the payment, unless the payment is made to an  
24 employee of the trust as compensation for services rendered as an employee and not  
25 as beneficiary of the trust; or

26 2. under or to an annuity plan that, at the time of payment,  
27 meets the requirements of § 401(a)(3) through (6) of the Internal Revenue Code;

28 (v) with respect to compensation paid to an employee for domestic  
29 service in a private home of the employing unit or for agricultural labor, the payment  
30 by an employing unit without deduction of the tax imposed on an employee under §  
31 3101 of the Internal Revenue Code;

32 (vi) any payment required from an employee under a state  
33 unemployment insurance law;

34 (vii) compensation paid in any medium other than cash to an  
35 employee for service not in the course of the trade or business of the employing unit;

1 (viii) any payment other than vacation or sick pay made to an  
2 employee after the month in which the employee becomes 65 years old if the employee  
3 did not work for the employing unit in the period for which the payment is made;

4 (ix) any payment, including an amount paid into a fund to provide  
5 for any payment by an employing unit to or on behalf of an employee under a plan or  
6 system that an employing unit establishes that provides for employees of the  
7 employing unit generally or a class or group of employees to supplement  
8 unemployment benefits;

9 (x) any payment to an individual as compensation for serving or  
10 being called to serve on a jury; or

11 (xi) any payment to an individual as allowance or reimbursement  
12 for travel or other expenses incurred on the business of the employer up to the  
13 amount of expenses actually incurred and accounted for by the individual to the  
14 employer.

15 [(y)] (CC) "Week" means a period of 7 consecutive days, as the Secretary sets by  
16 regulation.

17 8-206.

18 (F) (1) (I) UNLESS THE EMPLOYEE FILES A CLAIM WITHIN THE  
19 OPERATING PERIOD OF THE SEASONAL EMPLOYMENT, A SEASONAL EMPLOYEE MAY  
20 NOT BE PAID BENEFITS ON THE BASIS OF SERVICE PERFORMED IN SEASONAL  
21 EMPLOYMENT.

22 (II) IF AN EMPLOYEE FILES A CLAIM OUTSIDE THE OPERATING  
23 PERIOD OF THE SEASONAL EMPLOYMENT, BENEFITS MAY BE PAID ONLY ON THE  
24 BASIS OF WAGES EARNED IN EMPLOYMENT THAT WAS NOT SEASONAL  
25 EMPLOYMENT.

26 (2) (I) AT LEAST 60 DAYS BEFORE THE BEGINNING OF THE SEASONAL  
27 EMPLOYMENT, AN EMPLOYER CLAIMING TO BE A SEASONAL EMPLOYER SHALL  
28 PROVIDE THE SECRETARY, ON A FORM PROVIDED BY THE SECRETARY, WITH THE  
29 INFORMATION NECESSARY TO MAKE A SEASONAL DETERMINATION.

30 (II) THE SECRETARY SHALL USE THE INFORMATION PROVIDED BY  
31 THE EMPLOYER TO MAKE A SEASONAL DETERMINATION.

32 (III) UNTIL THE SECRETARY MAKES A SEASONAL DETERMINATION,  
33 AN EMPLOYER OR EMPLOYEE MAY NOT BE CONSIDERED SEASONAL.

34 (3) ANY EMPLOYER NOTIFIED OF A SEASONAL DETERMINATION MAY  
35 FILE AN APPEAL REGARDING THE SEASONAL DETERMINATION AND OBTAIN REVIEW  
36 OF THE DETERMINATION IN ACCORDANCE WITH TITLE 8, SUBTITLE 5 OF THIS  
37 ARTICLE.

1 (4) IF AN EMPLOYER IS DETERMINED TO BE A SEASONAL EMPLOYER,  
2 THE SEASONAL DETERMINATION:

3 (I) BECOMES EFFECTIVE ON THE FIRST DAY OF THE CALENDAR  
4 QUARTER COMMENCING AFTER THE DATE OF THE SEASONAL DETERMINATION; AND

5 (II) DOES NOT AFFECT ANY BENEFIT RIGHTS OF A SEASONAL  
6 EMPLOYEE WITH RESPECT TO THE EMPLOYEE'S EMPLOYMENT BEFORE THE  
7 EFFECTIVE DATE OF THE SEASONAL DETERMINATION.

8 (5) (I) AN EMPLOYER DETERMINED BY THE SECRETARY TO BE A  
9 SEASONAL EMPLOYER SHALL NOTIFY EACH EMPLOYEE IN WRITING AT THE TIME  
10 THE EMPLOYEE IS HIRED OR IMMEDIATELY AFTER THE SEASONAL DETERMINATION,  
11 WHICHEVER IS LATER, THAT:

12 1. THE EMPLOYEE IS PERFORMING SERVICES IN SEASONAL  
13 EMPLOYMENT FOR A SEASONAL EMPLOYER; AND

14 2. THE EMPLOYEE'S SEASONAL EMPLOYMENT IS LIMITED TO  
15 THE BEGINNING AND ENDING DATES OF THE EMPLOYER'S SEASONAL PERIOD, AS  
16 DETERMINED BY THE SECRETARY.

17 (II) AN EMPLOYEE WHO IS NOT NOTIFIED AS REQUIRED UNDER  
18 THIS PARAGRAPH IS NOT A SEASONAL EMPLOYEE AND IS NOT SUBJECT TO THE  
19 CLAIMS RESTRICTIONS PROVIDED UNDER THIS SUBSECTION.

20 (6) (I) IF A SEASONAL EMPLOYER, AFTER THE DATE OF ITS SEASONAL  
21 DETERMINATION, OPERATES ITS BUSINESS OR ITS SEASONAL OPERATION DURING A  
22 PERIOD OR PERIODS OF 16 WEEKS OR MORE IN A CALENDAR YEAR, THE SECRETARY  
23 SHALL REDETERMINE THE EMPLOYER TO HAVE LOST ITS SEASONAL STATUS WITH  
24 RESPECT TO THAT BUSINESS OR OPERATION, EFFECTIVE AT THE END OF THAT  
25 CALENDAR QUARTER.

26 (II) 1. THE SECRETARY'S REDETERMINATION SHALL BE  
27 REPORTED IN WRITING TO THE EMPLOYER.

28 2. THE EMPLOYER SHALL NOTIFY ITS EMPLOYEES OF THE  
29 REDETERMINATION NOT LATER THAN 5 WORK DAYS AFTER THE EMPLOYER  
30 RECEIVES NOTICE.

31 (III) 1. AN EMPLOYER NOTIFIED OF A REDETERMINATION MAY  
32 FILE AN APPEAL OF THE REDETERMINATION AND OBTAIN REVIEW OF THE  
33 REDETERMINATION IN ACCORDANCE WITH TITLE 8, SUBTITLE 5 OF THIS ARTICLE.

34 2. AN EMPLOYER'S NOTICE TO ITS EMPLOYEES OF A  
35 REDETERMINATION MAY INCLUDE NOTICE OF THE FILING OF AN APPEAL.

36 (7) A SEASONAL EMPLOYER SHALL:

1 (I) KEEP RECORDS OF WAGES PAID TO SEASONAL WORKERS  
2 WITHIN THE SEASONAL PERIOD DETERMINED BY THE SECRETARY; AND

3 (II) REPORT THE WAGES ON A SPECIAL SEASONAL QUARTERLY  
4 REPORT FORM ADOPTED BY THE SECRETARY.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2000.