

HOUSE BILL 583

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By: **Chair, Economic Matters Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Introduced and read first time: January 31, 2013

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance – Relief from Charges for Overpayment of Benefits**
3 **– Restrictions**

4 FOR the purpose of altering the circumstances under which the Secretary of Labor,
5 Licensing, and Regulation is prohibited from removing a benefit charge from the
6 earned rating record of an employing unit; requiring, except under certain
7 circumstances, the Secretary to remove benefits charged to a not for profit
8 organization or governmental entity from the account of the not for profit
9 organization or governmental entity under certain circumstances; prohibiting
10 the Secretary, under certain circumstances, from removing benefits charged to a
11 not for profit organization or governmental entity; specifying that, for certain
12 purposes, the employing unit or the employing unit's agent, not for profit
13 organization, or governmental entity must raise the issue of good cause in
14 writing and has the burden of proving good cause; prohibiting the Secretary
15 from finding good cause under certain circumstances; providing for the
16 application of this Act; and generally relating to the relief from charges for the
17 overpayment of unemployment benefits.

18 BY repealing and reenacting, with amendments,
19 Article – Labor and Employment
20 Section 8–611 and 8–620
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2012 Supplement)

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

25 **Article – Labor and Employment**

26 8–611.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) For each employing unit, the Secretary shall keep an earned rating
2 record that shows all benefits that are based on covered employment that was
3 performed for the employing unit.

4 (b) Except as provided in subsection (d) of this section, the Secretary shall
5 charge pro rata against the earned rating record of each base period employer all
6 regular benefits and the share of extended benefits required under subsection (c) of
7 this section in the same proportion as the wages paid by the base period employer is to
8 the total wages of the claimant during the base period, and rounded to the nearest
9 dollar.

10 (c) (1) Notwithstanding any other provision of this title, the Secretary
11 may not charge against the earned rating record of an employing unit an extended
12 benefit payment for which the State receives full reimbursement from the federal
13 government.

14 (2) Except as provided in subsection (d) of this section, the appropriate
15 share of extended benefits:

16 (i) for a governmental entity, is all extended benefits paid to a
17 claimant; and

18 (ii) for other employing units, is 50% of extended benefits paid
19 to a claimant.

20 (d) The Secretary shall charge all regular and extended benefits paid to a
21 claimant against the earned rating record of an employing unit that caused the
22 claimant's unemployment during any period in which the unemployment is caused by:

23 (1) participation of the employing unit in a work sharing
24 unemployment insurance program that the Secretary has approved; or

25 (2) a shutdown of the employing unit:

26 (i) to have employees take their vacations at the same time;

27 (ii) for inventory;

28 (iii) for retooling; or

29 (iv) for any other purpose that is primarily other than a lack of
30 work and that causes unemployment for a definite period.

31 (e) The Secretary may not charge benefits paid to a claimant against the
32 earned rating record of an employing unit if:

1 (1) the claimant left employment voluntarily without good cause
2 attributable to the employing unit;

3 (2) the claimant was discharged by the employing unit for gross
4 misconduct as defined in § 8–1002 of this title;

5 (3) the claimant was discharged by the employing unit for aggravated
6 misconduct as defined in § 8–1002.1 of this title;

7 (4) the claimant left employment voluntarily to accept better
8 employment or enter training approved by the Secretary;

9 (5) the employing unit participates in a work release program that is
10 designed to give an inmate of a correctional institution an opportunity to work while
11 imprisoned and unemployment was the result of the claimant's release from prison;

12 (6) the claimant was paid additional training benefits under § 8–812 of
13 this title; or

14 (7) the claimant left employment for good cause directly attributable
15 to the claimant or the claimant's spouse, minor child, or parent being a victim of
16 domestic violence as defined in § 8–1001(b)(3) of this title.

17 (f) (1) Except as provided in paragraph (2) of this subsection, if the
18 Secretary determines before the first day of the calendar year for which the rate is
19 assigned, that benefits that have been charged against the earned rating record of an
20 employing unit are recoverable under § 8–809 of this title, the Secretary shall remove
21 those charges from the earned rating record before computation of the earned rate.

22 (2) (I) The Secretary may not remove a benefit charge from an
23 earned rating record if:

24 1. the benefit was paid as a direct or indirect result of
25 the failure of the employing unit, **OR THE EMPLOYING UNIT'S AGENT**, to provide
26 **TIMELY OR ADEQUATE** information **RELATING TO A CLAIM FOR BENEFITS IN**
27 **RESPONSE TO A REQUEST FOR INFORMATION MADE BY** the Secretary [as required
28 by] **UNDER** this title or regulations adopted to carry out this title; **AND**

29 2. **THE EMPLOYING UNIT, OR THE EMPLOYING**
30 **UNIT'S AGENT, HAS NOT SHOWN GOOD CAUSE FOR FAILING TO PROVIDE TIMELY**
31 **OR ADEQUATE INFORMATION.**

32 (II) **IN DETERMINING WHETHER THE SECRETARY IS**
33 **PROHIBITED FROM REMOVING A BENEFIT CHARGE UNDER SUBPARAGRAPH (I)**
34 **OF THIS PARAGRAPH:**

1 **1. AN EMPLOYING UNIT, OR THE EMPLOYING UNIT'S**
2 **AGENT, MUST RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO**
3 **BE CONSIDERED; AND**

4 **2. THE EMPLOYING UNIT, OR THE EMPLOYING**
5 **UNIT'S AGENT, HAS THE BURDEN OF PROVING THERE WAS GOOD CAUSE FOR**
6 **FAILING TO PROVIDE TIMELY OR ADEQUATE INFORMATION.**

7 (g) The Secretary may not charge the earned rating record of an employing
8 unit that has employed a claimant on a continuous part-time basis and continues to
9 do so while the claimant is separated from other employment and is eligible for
10 benefits because of that separation.

11 (h) The Secretary may not charge the earned rating record of an employing
12 unit for benefits that are paid to a claimant during a period in which the claimant is
13 disqualified as a result of a reversal or redetermination.

14 (i) (1) If, as a direct or indirect result of an erroneous report of wages or
15 other information by an employing unit, benefits are paid to a claimant who is not
16 entitled to the benefits, the Secretary shall charge the benefits against the earned
17 rating record of the employing unit responsible for the erroneous report.

18 (2) Notwithstanding paragraph (1) of this subsection, on request of an
19 employing unit, the Secretary for cause may waive a charge to the employing unit
20 earned rating record that results from erroneous report by the employing unit.

21 (j) (1) If the Secretary allows an adjustment or refund under this title,
22 the Secretary shall correct the employing unit's earned rating record.

23 (2) (i) The Secretary may not change an earned rate assigned to an
24 employing unit as a result of an adjustment or refund unless under this title the
25 application is submitted by the December 31 preceding the calendar year for which the
26 rate is assigned.

27 (ii) The Secretary shall waive the December 31 deadline for
28 good cause.

29 8-620.

30 (a) (1) Reimbursement payments shall be made in accordance with this
31 section.

32 (2) Unless there is an application for review and redetermination of a
33 bill under § 8-621 of this subtitle, a not for profit organization or governmental entity
34 shall pay the bill under this section within 30 days after the Secretary mailed the bill

1 to the last known address of the not for profit organization or governmental entity or
2 otherwise delivered the bill to it.

3 (b) If benefits paid to an individual are based on wages paid by 2 or more
4 employing units, the amount payable by each employing unit under an election shall
5 be an amount whose ratio to total benefits paid is the same as the ratio that total base
6 period wages paid to the individual by that employing unit has to total base period
7 wages paid by all base period employing units.

8 (c) Except as provided in subsection (d) of this section, at the end of each
9 calendar quarter or any other period set by the Secretary, the Secretary shall send:

10 (1) to each not for profit organization that has made an election or if
11 the Secretary has approved a group account under § 8–619 of this subtitle, to the
12 group representative, a bill for all regular and work sharing benefits, and 50% of
13 extended benefits paid during that period that are attributable to covered employment
14 for that not for profit organization; and

15 (2) to each governmental entity that has made an election, a bill for all
16 regular, work sharing, and extended benefits paid during that period that are
17 attributable to covered employment for that governmental entity.

18 (d) (1) On request, the Secretary may allow a not for profit organization
19 or governmental entity that has made an election to make reimbursement payments
20 as provided in this subsection.

21 (2) If the Secretary approves a request, the method of payment shall
22 become effective on approval.

23 (3) At the end of each calendar quarter or other period set by the
24 Secretary, the Secretary shall mail to a not for profit organization or governmental
25 entity at its last known address or otherwise deliver to it:

26 (i) a bill for a percentage of its total payroll for the immediately
27 preceding calendar year as determined by the Secretary, based each year on the
28 average cost of benefits that are attributable to covered employment for the not for
29 profit organization or governmental entity during the immediately preceding calendar
30 year; or

31 (ii) if the not for profit organization or governmental entity did
32 not pay wages during the 4 calendar quarters of the preceding calendar year, a bill for
33 a percentage of its payroll during that year as determined by the Secretary.

34 (4) At the end of each calendar year:

1 (i) the Secretary may modify the periodic percentage of payroll
2 payable under this subsection for the upcoming year to minimize excess or insufficient
3 payments;

4 (ii) the Secretary shall determine the difference between
5 payments made by a not for profit organization or governmental entity and the
6 amount it is required to reimburse to the Unemployment Insurance Fund under §
7 8-616 of this subtitle; and

8 (iii) if the Unemployment Insurance Fund has not been
9 reimbursed fully, the Secretary shall mail to the not for profit organization or
10 governmental entity at its last known address or otherwise deliver to it a bill for the
11 difference and require payment in accordance with subsection (a)(2) of this section.

12 (5) If the total payments for a calendar year exceed the amount
13 required to be reimbursed, the Secretary may:

14 (i) refund all or part of the excess from the Unemployment
15 Insurance Fund; or

16 (ii) retain all or part of the excess in the Unemployment
17 Insurance Fund as part of the payments that may be required for the next calendar
18 year.

19 (e) An employing unit may not deduct, wholly or partly, any payment made
20 under this subtitle from the compensation of individuals in the employ of the not for
21 profit organization or governmental entity.

22 **(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
23 **SUBSECTION, IF THE SECRETARY RECOVERS BENEFITS CHARGED TO A NOT FOR**
24 **PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY UNDER § 8-809 OF THIS**
25 **TITLE, THE SECRETARY SHALL REMOVE THOSE CHARGES FROM THE ACCOUNT**
26 **OF THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY.**

27 **(2) (I) THE SECRETARY MAY NOT REMOVE A BENEFIT CHARGE**
28 **RECOVERED BY THE SECRETARY UNDER § 8-809 OF THIS TITLE FROM THE**
29 **ACCOUNT OF A NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY IF:**

30 **1. THE BENEFIT WAS PAID AS A DIRECT OR INDIRECT**
31 **RESULT OF THE FAILURE OF THE NOT FOR PROFIT ORGANIZATION OR**
32 **GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, TO**
33 **PROVIDE TIMELY OR ADEQUATE INFORMATION RELATING TO A CLAIM FOR**
34 **BENEFITS IN RESPONSE TO A REQUEST FOR INFORMATION MADE BY THE**
35 **SECRETARY UNDER THIS TITLE OR REGULATIONS ADOPTED TO CARRY OUT THIS**
36 **TITLE; AND**

1 **2. THE NOT FOR PROFIT ORGANIZATION OR**
2 **GOVERNMENTAL ENTITY HAS NOT DEMONSTRATED GOOD CAUSE FOR FAILING**
3 **TO PROVIDE TIMELY OR ADEQUATE INFORMATION.**

4 **(II) IN DETERMINING WHETHER THE SECRETARY IS**
5 **PROHIBITED FROM REMOVING A BENEFIT CHARGE UNDER SUBPARAGRAPH (I)**
6 **OF THIS PARAGRAPH:**

7 **1. THE NOT FOR PROFIT ORGANIZATION OR**
8 **GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, MUST**
9 **RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO BE**
10 **CONSIDERED; AND**

11 **2. THE NOT FOR PROFIT ORGANIZATION OR**
12 **GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, HAS THE**
13 **BURDEN OF PROVING THERE WAS GOOD CAUSE FOR FAILING TO PROVIDE**
14 **TIMELY OR ADEQUATE INFORMATION.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
16 benefit determinations issued on or after October 1, 2013.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2013.