

# 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

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Committee Report: Favorable

House action: Adopted

Read second time: March 16, 2013

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## CHAPTER \_\_\_\_\_

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)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Labor and Employment**

4 8–611.

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

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

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

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

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

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

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

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

29 (2) a shutdown of the employing unit:

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

31 (ii) for inventory;

32 (iii) for retooling; or

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

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

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

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

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

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

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

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

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

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

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

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

1                                   **2. THE EMPLOYING UNIT, OR THE EMPLOYING**  
2 **UNIT'S AGENT, HAS NOT SHOWN GOOD CAUSE FOR FAILING TO PROVIDE TIMELY**  
3 **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. AN EMPLOYING UNIT, OR THE EMPLOYING UNIT'S**  
8 **AGENT, MUST RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO**  
9 **BE CONSIDERED; AND**

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

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

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

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

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

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

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

33                   (ii) The Secretary shall waive the December 31 deadline for  
34 good cause.

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

3           (2)   Unless there is an application for review and redetermination of a  
4 bill under § 8–621 of this subtitle, a not for profit organization or governmental entity  
5 shall pay the bill under this section within 30 days after the Secretary mailed the bill  
6 to the last known address of the not for profit organization or governmental entity or  
7 otherwise delivered the bill to it.

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

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

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

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

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

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

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

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

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

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

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

8 (ii) the Secretary shall determine the difference between  
9 payments made by a not for profit organization or governmental entity and the  
10 amount it is required to reimburse to the Unemployment Insurance Fund under §  
11 8-616 of this subtitle; and

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

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

18 (i) refund all or part of the excess from the Unemployment  
19 Insurance Fund; or

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

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

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

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

34 **1. THE BENEFIT WAS PAID AS A DIRECT OR INDIRECT**  
35 **RESULT OF THE FAILURE OF THE NOT FOR PROFIT ORGANIZATION OR**

1 GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, TO  
2 PROVIDE TIMELY OR ADEQUATE INFORMATION RELATING TO A CLAIM FOR  
3 BENEFITS IN RESPONSE TO A REQUEST FOR INFORMATION MADE BY THE  
4 SECRETARY UNDER THIS TITLE OR REGULATIONS ADOPTED TO CARRY OUT THIS  
5 TITLE; AND

6                                   2. THE NOT FOR PROFIT ORGANIZATION OR  
7 GOVERNMENTAL ENTITY HAS NOT DEMONSTRATED GOOD CAUSE FOR FAILING  
8 TO PROVIDE TIMELY OR ADEQUATE INFORMATION.

9                                   (ii) IN DETERMINING WHETHER THE SECRETARY IS  
10 PROHIBITED FROM REMOVING A BENEFIT CHARGE UNDER SUBPARAGRAPH (I)  
11 OF THIS PARAGRAPH:

12                                   1. THE NOT FOR PROFIT ORGANIZATION OR  
13 GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, MUST  
14 RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO BE  
15 CONSIDERED; AND

16                                   2. THE NOT FOR PROFIT ORGANIZATION OR  
17 GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, HAS THE  
18 BURDEN OF PROVING THERE WAS GOOD CAUSE FOR FAILING TO PROVIDE  
19 TIMELY OR ADEQUATE INFORMATION.

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.