

# SENATE BILL 90

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6lr0027

(PRE-FILED)

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

Requested: October 9, 2015

Introduced and read first time: January 13, 2016

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 15, 2016

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

1 AN ACT concerning

2 **Unemployment Insurance – Recovery of Benefits and Penalties for Fraud**

3 FOR the purpose of altering the means by which the Secretary of Labor, Licensing, and  
4 Regulation is authorized to recover overpayments of benefits, monetary penalties,  
5 and interest; authorizing, under certain circumstances, the Secretary to adjust,  
6 compromise, or settle certain interest due; providing that a person who violates a  
7 certain provision of law is disqualified from receiving benefits for certain periods of  
8 time under certain circumstances; making a clarifying change; providing for the  
9 application of this Act; providing that only fraud determinations made on or after a  
10 certain date may count as a violation for certain purposes; making a certain  
11 conforming change; defining a certain term; and generally relating to the recovery of  
12 benefits and penalties for fraud under the Maryland Unemployment Insurance Law.

13 BY renumbering

14 Article – Labor and Employment

15 Section 8–101(t) through (aa), respectively

16 to be Section 8–101(u) through (bb), respectively

17 Annotated Code of Maryland

18 (2008 Replacement Volume and 2015 Supplement)

19 BY repealing and reenacting, without amendments,

20 Article – Labor and Employment

21 Section 8–101(a) and 8–1301

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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 Annotated Code of Maryland  
2 (2008 Replacement Volume and 2015 Supplement)

3 BY adding to  
4 Article – Labor and Employment  
5 Section 8–101(t)  
6 Annotated Code of Maryland  
7 (2008 Replacement Volume and 2015 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article – Labor and Employment  
10 Section 8–201.1, 8–809, and 8–1305  
11 Annotated Code of Maryland  
12 (2008 Replacement Volume and 2015 Supplement)

13 ~~BY repealing and reenacting, without amendments,~~  
14 ~~Article – Labor and Employment~~  
15 ~~Section 8–1301~~  
16 ~~Annotated Code of Maryland~~  
17 ~~(2008 Replacement Volume and 2015 Supplement)~~

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
19 That Section(s) 8–101(t) through (aa), respectively, of Article – Labor and Employment of  
20 the Annotated Code of Maryland be renumbered to be Section(s) 8–101(u) through (bb),  
21 respectively.

22 SECTION ~~4~~ 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

### Article – Labor and Employment

25 8–101.

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

27 (T) “KNOWINGLY” MEANS, EXCEPT AS OTHERWISE PROVIDED IN THIS  
28 TITLE, HAVING ACTUAL KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS  
29 DISREGARD FOR THE TRUTH.

30 8–201.1.

31 (a) [In this section, “knowingly” means having actual knowledge, deliberate  
32 ignorance, or reckless disregard for the truth.

33 (b) An employer may not fail to properly classify an individual as an employee.

1 [(c)] (B) (1) If the Secretary determines that an employing unit has failed to  
2 properly classify an individual as an employee, any and all contribution or reimbursement  
3 payments resulting from the failure to properly classify that are due and unpaid shall  
4 accrue interest as provided in paragraph (2) of this subsection.

5 (2) An employer who fails to pay the contribution or reimbursement  
6 payments within 45 days shall be assessed interest at the rate of 2% per month or part of  
7 a month from the first due date following notice of the misclassification until the Secretary  
8 receives the contribution or payment in lieu of contributions and interest.

9 [(d)] (C) The Secretary shall consider, as strong evidence that an employer did  
10 not knowingly fail to properly classify an individual, whether the employer:

11 (1) (i) classifies all workers who perform the same or substantially the  
12 same tasks for the employer as independent contractors; and

13 (ii) reports the income of the workers to the Internal Revenue  
14 Service as required by federal law; and

15 (2) has received a determination from the Internal Revenue Service that  
16 the individual or a worker who performs the same or substantially the same tasks for the  
17 employer is an independent contractor.

18 [(e)] (D) If the Secretary determines that an employing unit has knowingly  
19 failed to properly classify an individual as an employee, the employing unit shall be subject  
20 to a civil penalty of not more than \$5,000 per employee.

21 [(f)] (E) (1) A person may not knowingly advise an employing unit or a  
22 prospective employing unit to take action for the purposes of violating this section.

23 (2) A person found in violation of this subsection shall be subject to a civil  
24 penalty of not more than \$20,000.

25 [(g)] (F) An employing unit found to have knowingly violated this section who  
26 has also been found previously to have knowingly violated this section by a final order of a  
27 court or administrative unit may be assessed double the administrative penalties set forth  
28 in subsection [(d)] (C) of this section for the new violation.

29 [(h)] (G) (1) An employing unit may be assessed civil penalties by only one  
30 order of a court or administrative unit for the same actions constituting a knowing failure  
31 to properly classify an individual as an employee.

32 (2) Notwithstanding paragraph (1) of this subsection, an employing unit  
33 may be ordered to make restitution, pay any interest due, and otherwise comply with all  
34 applicable laws and regulations by orders of a court, the Secretary, and all other relevant

1 administrative units, including the Comptroller, the Workers' Compensation Commission,  
2 the Insurance Administration, and the Division of Labor and Industry.

3 **[(i)] (H)** If the Secretary determines that an employing unit has failed to  
4 properly classify an individual as an employee, the Secretary shall promptly notify the  
5 Workers' Compensation Commission, the Division of Labor and Industry, the Insurance  
6 Administration, and the Comptroller.

7 **[(j)] (I)** As authorized by State and federal law, units within the Department of  
8 Labor, Licensing, and Regulation and the Department of Budget and Management, the  
9 Secretary of State, the Comptroller, the Insurance Administration, and other State  
10 agencies shall cooperate and share information concerning any suspected violation of this  
11 title.

12 **[(k)] (J)** (1) The Secretary shall adopt regulations to carry out this section.

13 (2) The regulations shall:

14 (i) require that the Secretary provide an employer with the factual  
15 basis for any violations charged;

16 (ii) establish procedures regarding the audit process and any agency  
17 level review available before appeal; and

18 (iii) provide guidance as to what constitutes the evidence relevant to  
19 the determination of whether an employer knowingly failed to properly classify an  
20 individual as an employee.

21 8-809.

22 (a) The Secretary may recover benefits paid to a claimant if the Secretary finds  
23 that the claimant was not entitled to the benefits because:

24 (1) the claimant was not unemployed;

25 (2) the claimant received or retroactively was awarded wages; or

26 (3) due to a redetermination of an original claim by the Secretary, the  
27 claimant is disqualified or otherwise ineligible for benefits.

28 (b) If the Secretary finds that a claimant knowingly made a false statement or  
29 representation or knowingly failed to disclose a material fact to obtain or increase a benefit  
30 or other payment under this title, in addition to disqualification of the claimant, the  
31 Secretary may recover from the claimant:

1 (1) all benefits paid to the claimant for each week for which the false  
2 statement or representation was made or for which the claimant failed to disclose a  
3 material fact;

4 (2) a monetary penalty of 15% of all benefits paid to the claimant for each  
5 week for which the false statement or representation was made or for which the claimant  
6 failed to disclose a material fact; and

7 (3) interest of 1.5% per month on the amount of all benefits paid to the  
8 claimant for each week for which the false statement or representation was made or for  
9 which the claimant failed to disclose a material fact plus the amount of the monetary  
10 penalty accruing from the date that the claimant is notified by the Secretary that the  
11 claimant was not entitled to benefits received.

12 (c) If the Secretary decides to recover benefits from a claimant under subsection  
13 (a) or (b) of this section, the Secretary shall notify the claimant of:

14 (1) the amount to be recovered;

15 (2) the weeks for which benefits were paid;

16 (3) the amount of any monetary penalty assessed under subsection (b)(2)  
17 of this section and the reason for the assessment of the monetary penalty; and

18 (4) the provision of this title under which the Secretary determined that  
19 the claimant was ineligible for benefits.

20 (d) The Secretary may recover an amount under subsection (a) [or (b)] of this  
21 section:

22 (1) by deduction from benefits payable to the claimant in the future[,  
23 excluding the monetary penalty assessed under subsection (b)(2) of this section and interest  
24 due under subsection (b)(3) of this section]; [or]

25 (2) in the manner provided in § 8-630 of this title for the collection of past  
26 due contributions; **OR**

27 **(3) THROUGH OTHER REASONABLE MEANS OF COLLECTION,**  
28 **INCLUDING THOSE PERMITTED UNDER:**

29 **(I) STATE LAW FOR THE COLLECTION OF DEBTS OWED TO THE**  
30 **STATE; OR**

31 **(II) FEDERAL LAW.**

1           **(E) THE SECRETARY MAY RECOVER AN AMOUNT UNDER SUBSECTION (B) OF**  
2 **THIS SECTION:**

3                   **(1) IN THE MANNER PROVIDED IN § 8-630 OF THIS TITLE FOR THE**  
4 **COLLECTION OF PAST DUE CONTRIBUTIONS;**

5                   **(2) THROUGH OTHER REASONABLE MEANS OF COLLECTION,**  
6 **INCLUDING THOSE PERMITTED UNDER:**

7                           **(I) STATE LAW FOR THE COLLECTION OF DEBTS OWED TO THE**  
8 **STATE; OR**

9                           **(II) FEDERAL LAW; OR**

10                   **(3) IF THE DEDUCTION IS MADE BY ANOTHER JURISDICTION UNDER**  
11 **AN INTERGOVERNMENTAL AGREEMENT PROVIDING FOR THE RECOVERY OF**  
12 **OVERPAID BENEFITS, BY DEDUCTION FROM BENEFITS FOR WHICH THE CLAIMANT IS**  
13 **ELIGIBLE IN THE FUTURE UNDER THE LAW OF THE JURISDICTION THAT MADE THE**  
14 **DEDUCTION, EXCLUDING THE MONETARY PENALTY ASSESSED UNDER SUBSECTION**  
15 **(B)(2) OF THIS SECTION AND INTEREST DUE UNDER SUBSECTION (B)(3) OF THIS**  
16 **SECTION.**

17           **[(e)] (F) (1) The Secretary may reconsider a decision to recover benefits**  
18 **under subsection (a) of this section within 1 year after the date that the decision was made.**

19                   **(2) The Secretary may not make a determination to recover benefits under**  
20 **subsection (a) or (b) of this section later than 3 years after the date that the benefits were**  
21 **paid to the claimant.**

22                   **(3) If an amount UNDER SUBSECTION (A) OR (B) OF THIS SECTION has**  
23 **not been recovered within 5 years after the date of the decision to recover the amount, the**  
24 **Secretary may consider the amount uncollectible.**

25                   **(4) IF THE SECRETARY DETERMINES THAT THE BEST INTERESTS OF**  
26 **THE STATE WILL BE SERVED, THE SECRETARY MAY ADJUST, COMPROMISE, OR**  
27 **SETTLE INTEREST DUE UNDER SUBSECTION (B) OF THIS SECTION OR UNDER §**  
28 **8-1305 OF THIS TITLE.**

29           **[(f)] (G) Notwithstanding any other provision of this section, the Secretary may**  
30 **recover, under a governmental offset agreement, an overpayment of benefits paid to any**  
31 **claimant under:**

32                   **(1) the unemployment insurance law of another state; or**

33                   **(2) a federal unemployment insurance benefit program.**

1 8-1301.

2 A person, for that person or another, may not knowingly make a false statement or  
3 false representation or knowingly fail to disclose a material fact to receive or increase a  
4 benefit or other payment under this title or an unemployment insurance law of another  
5 state, the federal government, or a foreign government.

6 8-1305.

7 (a) Unless another penalty is provided by statute, a person who willfully violates  
8 a provision of this title or a regulation adopted under this title is guilty of a misdemeanor  
9 and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding  
10 90 days or both.

11 (b) In addition to the penalty under subsection (a) of this section, a person who  
12 violates § 8-1301 of this subtitle:

13 (1) shall make full restitution of the benefit unlawfully received and pay a  
14 monetary penalty of 15% of the benefit unlawfully received, including interest at a rate of  
15 1.5% a month on the total amount of restitution plus the monetary penalty from the date  
16 the Secretary notifies the person of the amount to be recovered; [and]

17 (2) [from] **SHALL BE DISQUALIFIED FROM RECEIVING BENEFITS FOR**  
18 **ANY WEEK OF UNEMPLOYMENT, INCLUDING THE WEEK IN WHICH A DETERMINATION**  
19 **IS MADE THAT THE INDIVIDUAL FILED A CLAIM INVOLVING A FALSE STATEMENT,**  
20 **FALSE REPRESENTATION, OR FAILURE TO DISCLOSE A MATERIAL FACT, UNTIL:**

21 (i) **THE SECRETARY DETERMINES THAT:**

22 1. **THE BENEFIT UNLAWFULLY RECEIVED HAS BEEN**  
23 **REPAID IN FULL; AND**

24 2. **THE MONETARY PENALTY OF 15% AND INTEREST AT A**  
25 **RATE OF 1.5% A MONTH ON THE TOTAL AMOUNT OF BENEFIT UNLAWFULLY**  
26 **RECEIVED PLUS THE MONETARY PENALTY HAVE BEEN PAID IN FULL; OR**

27 (ii) **THE SECRETARY DETERMINES THAT:**

28 1. **IN THE SECRETARY'S SOLE DISCRETION UNDER §**  
29 **8-809(F)(3) OF THIS TITLE, THE BENEFIT UNLAWFULLY RECEIVED AND INTEREST**  
30 **ARE UNCOLLECTIBLE; AND**

31 2. **THE CLAIMANT HAS PAID THE 15% MONETARY**  
32 **PENALTY IN FULL; AND**

**(3) SHALL BE DISQUALIFIED FROM RECEIVING BENEFITS:**

**(I) IF THERE WERE NO OTHER PREVIOUS DETERMINATIONS MADE THAT THE INDIVIDUAL VIOLATED § 8-1301 OF THIS SUBTITLE DURING THE IMMEDIATELY PRECEDING 4 BENEFIT YEARS, FOR 1 year from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact[, the individual is disqualified from receiving benefits];**

**(II) IF THERE WERE PREVIOUS DETERMINATIONS MADE THAT THE INDIVIDUAL VIOLATED § 8-1301 OF THIS SUBTITLE IN ONLY 1 OF THE IMMEDIATELY PRECEDING 4 BENEFIT YEARS, FOR 2 YEARS FROM THE DATE ON WHICH A DETERMINATION IS MADE THAT THE INDIVIDUAL FILED A CLAIM INVOLVING A FALSE STATEMENT, FALSE REPRESENTATION, OR FAILURE TO DISCLOSE A MATERIAL FACT; AND**

**(III) IF THERE WERE PREVIOUS DETERMINATIONS MADE THAT THE INDIVIDUAL VIOLATED § 8-1301 OF THIS SUBTITLE IN MORE THAN 1 OF THE IMMEDIATELY PRECEDING 4 BENEFIT YEARS, FOR 3 YEARS FROM THE DATE ON WHICH A DETERMINATION IS MADE THAT THE INDIVIDUAL FILED A CLAIM INVOLVING A FALSE STATEMENT, FALSE REPRESENTATION, OR FAILURE TO DISCLOSE A MATERIAL FACT.**

(c) (1) An employing unit or officer or agent of an employing unit who violates § 8-1303 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(2) A person who violates § 8-5A-08(b) or (d) of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(3) A person who violates § 8-1304 of this subtitle is guilty of a misdemeanor for each day the violation continues and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(4) An employee of the Secretary or Board of Appeals who violates § 8-625 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall apply to fraud determinations made on or after October 3, 2016.

~~SECTION 4.~~ AND BE IT FURTHER ENACTED, That only a fraud determination made on or after October 3, 2016, may count as a previous determination for the purpose

1 of applying § 8-1305(b)(3) of the Labor and Employment Article, as enacted by Section ~~4~~ 2  
2 of this Act.

3 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2016.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.