

SENATE BILL 90

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(PRE-FILED)

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

A BILL ENTITLED

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; and generally relating to
11 the recovery of benefits and penalties for fraud under the Maryland Unemployment
12 Insurance Law.

13 BY repealing and reenacting, with amendments,
14 Article – Labor and Employment
15 Section 8–809 and 8–1305
16 Annotated Code of Maryland
17 (2008 Replacement Volume and 2015 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Labor and Employment
20 Section 8–1301
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2015 Supplement)

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

25 **Article – Labor and Employment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 8–809.

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

4 (1) the claimant was not unemployed;

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

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

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

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

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

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

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

25 (1) the amount to be recovered;

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

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

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

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

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

4 (2) in the manner provided in § 8–630 of this title for the collection of past
5 due contributions; OR

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

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

10 **(II) FEDERAL LAW.**

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

13 **(1) IN THE MANNER PROVIDED IN § 8–630 OF THIS TITLE FOR THE
14 COLLECTION OF PAST DUE CONTRIBUTIONS;**

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

17 **(I) STATE LAW FOR THE COLLECTION OF DEBTS OWED TO THE
18 STATE; OR**

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

20 **(3) IF THE DEDUCTION IS MADE BY ANOTHER JURISDICTION UNDER
21 AN INTERGOVERNMENTAL AGREEMENT PROVIDING FOR THE RECOVERY OF
22 OVERPAID BENEFITS, BY DEDUCTION FROM BENEFITS FOR WHICH THE CLAIMANT IS
23 ELIGIBLE IN THE FUTURE UNDER THE LAW OF THE JURISDICTION THAT MADE THE
24 DEDUCTION, EXCLUDING THE MONETARY PENALTY ASSESSED UNDER SUBSECTION
25 (B)(2) OF THIS SECTION AND INTEREST DUE UNDER SUBSECTION (B)(3) OF THIS
26 SECTION.**

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

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

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

4 (4) **IF THE SECRETARY DETERMINES THAT THE BEST INTERESTS OF**
5 **THE STATE WILL BE SERVED, THE SECRETARY MAY ADJUST, COMPROMISE, OR**
6 **SETTLE INTEREST DUE UNDER SUBSECTION (B) OF THIS SECTION OR UNDER §**
7 **8-1305 OF THIS TITLE.**

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

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

12 (2) a federal unemployment insurance benefit program.

13 8-1301.

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

18 8-1305.

19 (a) Unless another penalty is provided by statute, a person who willfully violates
20 a provision of this title or a regulation adopted under this title is guilty of a misdemeanor
21 and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding
22 90 days or both.

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

25 (1) shall make full restitution of the benefit unlawfully received and pay a
26 monetary penalty of 15% of the benefit unlawfully received, including interest at a rate of
27 1.5% a month on the total amount of restitution plus the monetary penalty from the date
28 the Secretary notifies the person of the amount to be recovered; [and]

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

33 (I) **THE SECRETARY DETERMINES THAT:**

1 1. THE BENEFIT UNLAWFULLY RECEIVED HAS BEEN
2 REPAID IN FULL; AND

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

6 (II) THE SECRETARY DETERMINES THAT:

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

10 2. THE CLAIMANT HAS PAID THE 15% MONETARY
11 PENALTY IN FULL; AND

12 (3) SHALL BE DISQUALIFIED FROM RECEIVING BENEFITS:

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

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

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

31 (c) (1) An employing unit or officer or agent of an employing unit who violates
32 § 8-1303 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine
33 not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

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

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

7 (4) An employee of the Secretary or Board of Appeals who violates § 8-625
8 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
9 \$1,000 or imprisonment not exceeding 1 year or both.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to fraud
11 determinations made on or after October 3, 2016.

12 SECTION 3. AND BE IT FURTHER ENACTED, That only a fraud determination
13 made on or after October 3, 2016, may count as a previous determination for the purpose
14 of applying § 8-1305(b)(3) of the Labor and Employment Article, as enacted by Section 1 of
15 this Act.

16 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2016.