

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 137

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

Unemployment Insurance - Recovery of Benefits - Collection by Assessment

This departmental bill authorizes the Secretary of Labor, Licensing, and Regulation to recover the principal amount of unemployment insurance (UI) benefits that have been improperly paid to a claimant by assessment – in the same manner as that used for the assessment of past-due employer contributions. If the Secretary seeks to do so, the Secretary must still allow a claimant to elect, within 30 days of the date of the notice of assessment, to have the amount collected by suit instead. The Secretary must adopt regulations to provide general guidance about the processes under which the Secretary may recover benefits and the application of specified provisions to the recovery of benefits by assessment under the bill.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations. There is no effect on staffing levels at the Department of Labor, Licensing, and Regulation (DLLR). District Court caseloads are not materially affected.

Unemployment Insurance Trust Fund (UITF) Effect: UITF expenditures decrease by up to \$25,000 annually – likely not beginning until FY 2019 – from reduced costs associated with the recovery of improperly paid benefits, which include private process service and court filing fees. UITF revenues associated with the recovery of improperly paid benefits may accelerate and/or increase, again likely beginning in FY 2019, to the extent that the bill allows a more efficient method of benefit recovery. The effect on UITF revenues and expenditures is lessened to the extent that individuals choose to require DLLR to seek collection of improperly paid benefits by suit.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The Secretary may recover all UI benefits determined to have been improperly paid to a claimant under the conditions and through the processes described below. Subsections of the recovery statute establish separate processes for the recovery of improperly paid benefits and for the recovery of benefits, interest, and penalties resulting from a fraud determination. DLLR advises that findings by the Secretary under the two processes are not mutually exclusive and that the principal amount in a fraud determination may be recovered as an improperly paid benefit.

Recovery of Improperly Paid Benefits

If the Secretary seeks recovery of improperly paid benefits from a claimant, the Secretary must notify the claimant of (1) the amount to be recovered; (2) the weeks for which benefits were paid; (3) the amount of any monetary penalty, if applicable, and the reason for the assessment of the monetary penalty; and (4) the provision of law under which the Secretary determined that the claimant was ineligible for benefits.

The Secretary may recover benefits paid to a claimant if the Secretary finds that the claimant was not entitled to the benefits because (1) the claimant was not unemployed; (2) the claimant received or retroactively was awarded wages; or (3) due to a redetermination of an original claim by the Secretary, the claimant is disqualified or otherwise ineligible for benefits.

The Secretary may recover improperly paid benefits (1) by deduction from benefits payable to the claimant in the future; (2) in the manner specified in current law for the collection of past-due employer contributions (a civil suit); or (3) through other reasonable means of collection, including those permitted under State law for the collection of debts owed to the State or federal law. The Secretary is *not* authorized to recover the improperly paid benefits through an assessment process.

Recovery Related to Fraud

If the Secretary finds that a claimant knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other

UI-related payment, in addition to disqualification of the claimant, the Secretary may recover the benefits paid, a penalty of 15% of the benefits paid, and 1.5% interest per month.

The Secretary may recover those benefits, penalty, and interest (1) in the manner provided in current law for the collection of past-due employer contributions (a civil suit); (2) through other reasonable means of collection, including those permitted under State law for the collection of debts owed to the State or federal law; or (3) under other specified circumstances, pursuant to an intergovernmental agreement providing for the recovery of improperly paid benefits. The Secretary is *not* authorized to recover the improperly paid benefits, penalty, and interest through an assessment process.

Assessment Process for Past-due Employer Contributions

The assessment process for past-due employer contributions is distinct from collection of past-due employer contributions through a civil suit. Under the assessment process, if an employer fails to make a reimbursement payment or pay interest on the payment, the Secretary (1) may assess the amount of the payment or interest due and (2) must mail written notice of the assessment to the employer at the employer's last known address or otherwise deliver the notice.

An assessment is final unless the employer applies to the Board of Appeals (within the Division of Unemployment Insurance) for a hearing or, on its own motion, the board reduces the contribution or interest. After a hearing, the board must (1) pass an order to affirm, modify, or set aside the assessment and (2) promptly give an employer written notice of its decision.

If the employer fails to pay the assessment, the Secretary may file with the clerk of the circuit court of the county where the employer's principal place of business is located and any other county a notice of a lien. That notice states the name and address of the employer, the amount of the assessment, and that the time for filing an appeal for judicial review has expired without an appeal having been taken.

On the filing of a notice of a lien, the clerk of the court must record and index the lien and enter the lien in the judgment docket of the court, subject to specified requirements. On entry in the judgment docket of this information, the amount of the assessment, court costs, recording costs, and interest that continues to accrue on the assessment are a lien on the real and personal property of the employer against whom the assessment is made in the same manner and having the same force and effect as a judgment lien. No property that an employer uses in connection with its business is exempt from the lien. A writ of garnishment may then be obtained referencing the lien.

Background: DLLR is required to seek repayment when a claimant has been found to have been improperly paid UI benefits. Cases that reach the level of collection addressed by the bill typically involve claimants who are not actively involved in repayment agreements or do not have a history of significant, consistent repayment. In these cases, DLLR advises that statute currently requires the department to seek repayment by obtaining a judgment in District Court. This process involves the time and associated costs of departmental attorneys, paralegals, and assorted staff to review, prepare, and file lawsuits for each individual claimant. There are also costs to the court system in filing, tracking, and resolving cases.

Additionally, DLLR advises that requiring the department to litigate these “hard to collect” cases in lieu of filing liens affords the claimant an avenue to further delay collection. At the point where litigation is initiated, a claimant has both exhausted his or her administrative appeal rights, including the right to appeal in circuit court, and the individual has demonstrated a history of noncompliance with collection notices.

The bill provides an opportunity for DLLR to not litigate these cases, provided that the claimant does not elect to have the amount collected by suit. Authorization to collect by assessment allows the department to file a lien against a claimant for the principal amount of the improperly paid benefits after other methods of recovery have been attempted, which is significantly more efficient than the current process. The lien is then used to obtain a writ of garnishment.

DLLR currently has approximately 1,100 cases pending in District Court seeking a judgment. For context, there were approximately 291,000 civil cases filed statewide in District Court in fiscal 2015. DLLR received an average of \$683,000 annually from wage garnishments from 2014 through 2016.

DLS notes that the bill does not authorize collection by assessment for interest and penalties resulting from a fraud determination. These amounts must still be recovered through existing processes established in current law.

Additional Information

Prior Introductions: None.

Cross File: SB 21 (Chair, Finance Committee)(By Request - Departmental - Labor, Licensing and Regulation) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2017
mm/ljm Third Reader - March 27, 2017
Revised - Amendment(s) - March 27, 2017

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL:

Unemployment Insurance – Recovery of Benefits – Method of Collection

BILL NUMBER: SB 21/HB 137

PREPARED BY: Jared W. Murphy, Director of Legal Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS