

SENATE BILL 685

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1998 Regular Session
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CF 8lr2288

By: **Senator Bromwell**
Introduced and read first time: February 12, 1998
Assigned to: Rules
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Committee Report: Favorable
Senate action: Adopted
Read second time: March 18, 1998

CHAPTER _____

1 AN ACT concerning

2 **Unemployment Insurance - Appeals**

3 FOR the purpose of making certain changes respecting the standing of the Secretary
4 of Labor, Licensing, and Regulation in certain appeals involving unemployment
5 insurance; providing a certain effective date; and generally relating to
6 unemployment insurance.

7 BY repealing and reenacting, with amendments,
8 Article - Labor and Employment
9 Section 8-509, 8-510, 8-512, and 8-806
10 Annotated Code of Maryland
11 (1991 Volume and 1997 Supplement)

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

14 **Article - Labor and Employment**

15 8-509.

16 (a) An individual who files a claim for benefits or an employer entitled to
17 notice of a determination or redetermination of the claim may file an appeal with the
18 Board of Appeals within 15 days after notice of the determination or redetermination
19 is mailed to the claimant or employer at the last known address of the claimant or
20 employer or otherwise is delivered.

1 (B) THE SECRETARY, AT THE SECRETARY'S DISCRETION, MAY BE A PARTY TO
2 AN APPEAL FILED BY A CLAIMANT OR EMPLOYING UNIT WITH THE BOARD OF
3 APPEALS.

4 [(b)] (C) (1) Unless an appeal filed under subsection (a) of this section is
5 withdrawn or removed to the Board of Appeals, a hearing examiner designated by the
6 Board of Appeals shall:

7 (i) give the parties a reasonable opportunity for a fair hearing in
8 accordance with the notice provisions in §§ 10-207 and 10-208 of the State
9 Government Article, except that the notice is not subject to § 10-208(b)(4) and (7) of
10 the State Government Article;

11 (ii) make findings of fact and conclusions of law, based on a
12 preponderance of evidence, in accordance with § 10-217 of the State Government
13 Article; and

14 (iii) on the basis of the findings of fact and conclusions of law,
15 affirm, modify, or reverse a determination or redetermination.

16 (2) The Board of Appeals may transfer an appeal from 1 hearing
17 examiner to another or remove an appeal to itself.

18 [(c)] (D) The hearing examiner promptly shall give each party:

19 (1) notice of the decision of the hearing examiner in accordance with §
20 10-221 of the State Government Article; and

21 (2) a copy of the decision and the findings of fact and conclusions of law
22 that support the decision.

23 [(d)] (E) The decision of the hearing examiner is final unless further review is
24 initiated under § 8-510 of this subtitle.

25 8-510.

26 (a) A party who wishes to file an appeal with the Board of Appeals shall do so
27 within 15 days after notice of the decision of a hearing examiner or determination of
28 the Secretary was mailed to the party at the last known address of the party or
29 otherwise was delivered to the party.

30 (b) After a hearing examiner makes a final decision under § 8-509 of this
31 subtitle:

32 (1) if the hearing examiner does not affirm the determination or
33 redetermination of a claim, the Board of Appeals shall allow an appeal by EITHER
34 THE SECRETARY, OR a party entitled to notice of the decision, OR BOTH; and

1 (2) if the hearing examiner affirms the determination or
2 redetermination of a claim, the Board of Appeals may allow an appeal by a party
3 entitled to notice of the decision.

4 (c) Within the time limit for filing an appeal under subsection (a) of this
5 section, on its own motion the Board of Appeals may initiate a review of the decision
6 of a hearing examiner.

7 (d) On review on its own motion or on appeal, the Board of Appeals may
8 affirm, modify, or reverse the findings of fact or conclusions of law of the hearing
9 examiner on the basis of:

10 (1) evidence submitted to the hearing examiner; or

11 (2) evidence that the Board of Appeals may direct to be taken.

12 (e) A proceeding removed or appealed to the Board of Appeals shall be heard
13 by a quorum.

14 8-512.

15 (a) (1) [Any party who is aggrieved by a final decision of the Board of
16 Appeals may appeal the decision to a circuit court.] A FINAL DECISION OF THE
17 BOARD OF APPEALS MAY BE APPEALED TO A CIRCUIT COURT BY ANY PARTY
18 AGGRIEVED BY THE DECISION, THE SECRETARY, OR BOTH.

19 (2) IN ADDITION TO STANDING AUTHORIZED UNDER PARAGRAPH (1) OF
20 THIS SUBSECTION, THE SECRETARY MAY APPEAL ON BEHALF OF THE FEDERAL
21 GOVERNMENT ANY DECISION OF THE BOARD OF APPEALS IN WHICH THE SECRETARY
22 IS AN AGENT OF THE FEDERAL GOVERNMENT AND RESPONSIBLE FOR THE
23 ADMINISTRATION OF A FEDERAL UNEMPLOYMENT COMPENSATION PROGRAM.

24 [(2)] (3) The Board of Appeals may be a party to an appeal under this
25 section and may be represented by the Attorney General or by any qualified lawyer
26 who is a regular salaried employee of the Board of Appeals and who has been
27 designated by it for that purpose on recommendation of the Attorney General.

28 [(3)] (4) A court or an officer of a court may not charge an individual who
29 claims benefits a fee in any proceeding under this title.

30 (b) An employer that is aggrieved by a final decision under § 8-602 or § 8-629
31 or § 8-638 of this title may appeal to the circuit court for Baltimore City or for a
32 county where the employer does business.

33 (c) The Board of Appeals may certify to a circuit court a question of law that is
34 involved in a decision by the Board of Appeals.

35 (d) In a judicial proceeding under this section, findings of fact of the Board of
36 Appeals are conclusive and the jurisdiction of the court is confined to questions of law
37 if:

1 (1) findings of fact are supported by evidence that is competent,
2 material, and substantial in view of the entire record; and

3 (2) there is no fraud.

4 (e) (1) A circuit court shall give priority to an appeal or a certified question
5 of law under this section over all other civil cases except cases under the Workers'
6 Compensation Law of the State.

7 (2) A circuit court shall hear an appeal or a certified question of law
8 under this section in a summary manner.

9 (f) In a judicial proceeding under this section, a circuit court may not require
10 a person to:

11 (1) enter an exception to a ruling of the Board of Appeals; or

12 (2) post a bond for entering an appeal.

13 (g) A party may appeal from a decision of a circuit court to the Court of Special
14 Appeals in the same manner as provided for in civil cases, consistent with this title.

15 (h) On final decision in a judicial proceeding under this section, the Board of
16 Appeals shall pass an order in accordance with the decision.

17 8-806.

18 (a) (1) Except as provided in subsection (b) of this section a claims examiner
19 promptly shall make a determination on a claim filed under § 8-805(a) of this
20 subtitle.

21 (2) Whenever a determination involves resolution of a dispute of
22 material fact, a claims examiner shall:

23 (i) conduct a predetermination proceeding; and

24 (ii) give each party notice of the time and place of the proceeding.

25 (b) (1) A claim shall be referred to the Board of Appeals if determination of
26 the claim involves:

27 (i) a disqualification based on a stoppage of work due to a labor
28 dispute;

29 (ii) multiple claims; or

30 (iii) a difficult issue of fact or law.

31 (2) The Board of Appeals promptly shall hear and decide each claim
32 referred to it under this subsection.

- 1 (c) (1) Every initial determination shall state:
- 2 (i) whether the claimant has been paid the wages required by §
3 8-802 of this subtitle;
- 4 (ii) the weekly benefit amount of the claimant for the benefit year;
5 and
- 6 (iii) the maximum benefits payable to the claimant for the benefit
7 year.
- 8 (2) Each determination shall include a statement as to:
- 9 (i) whether a claimant is eligible for benefits for the week for
10 which the determination is made;
- 11 (ii) the benefits to which the claimant is entitled; and
- 12 (iii) the reasons for the determination.
- 13 (d) (1) On determination of a claim, the Secretary promptly shall mail notice
14 of the determination to the claimant at the last known address of the claimant or
15 otherwise deliver it to the claimant.
- 16 (2) Except as provided in paragraph (3) of this subsection, on
17 determination of a claim that involves application of § 8-903(a) of this subtitle or
18 disqualification under Subtitle 10 of this title, the Secretary promptly shall:
- 19 (i) mail notice of the determination to the last employing unit of
20 the claimant at the last known address of the employing unit or otherwise deliver it to
21 that employer; and
- 22 (ii) include in the notice the reasons for the determination.
- 23 (3) If, before a determination, an employer fails to indicate, in
24 accordance with regulations of the Secretary, that a claimant may be disqualified or
25 ineligible for benefits, the Secretary need not notify the employer of the
26 determination.
- 27 (e) (1) A determination is final as to a claimant and an employer who is
28 entitled to notice of the determination unless:
- 29 (i) within 15 days after the mailing or other delivery of the notice,
30 the claimant or employer appeals the determination; or
- 31 (ii) after the time for an appeal on an initial determination has
32 passed, the Secretary may make a redetermination under subsection (f) of this
33 section.
- 34 (2) The Board of Appeals, for good cause, may extend the time for an
35 appeal under this subsection.

1 (f) (1) If an interested party does not appeal an initial determination, the
2 Secretary may redetermine:

- 3 (i) the eligibility of the claimant to receive benefits;
- 4 (ii) the weekly benefit amount of the claimant;
- 5 (iii) the maximum benefits payable to the claimant in a benefit
6 year; and
- 7 (iv) the decision to recover an overpayment.

8 (2) In accordance with subsection (d) of this section, the Secretary shall
9 send notice of the redetermination to the claimant and an employer who is entitled to
10 notice.

11 (3) A redetermination is final unless an appeal is filed in accordance
12 with subsection (e) of this section.

13 (g) (1) Within 15 days after the date of mailing of the notice or the date of
14 delivery, a claimant or employing unit entitled to notice of a determination or
15 redetermination under this section may appeal to the Board of Appeals.

16 (2) THE SECRETARY MAY, AT THE SECRETARY'S DISCRETION, BE A
17 PARTY TO AN APPEAL FILED BY A CLAIMANT OR EMPLOYING UNIT WITH THE BOARD
18 OF APPEALS.

19 [(2)] (3) Unless an appeal of a determination or redetermination under
20 this section is withdrawn or removed to the Board of Appeals, a hearing examiner
21 designated by the Board of Appeals shall:

- 22 (i) give the parties a reasonable opportunity for a fair hearing in
23 accordance with the notice provisions in §§ 10-207 and 10-208 of the State
24 Government Article, except that the provisions of § 10-208(b)(4) and (7) do not apply;
- 25 (ii) make findings of fact and conclusions of law; and
- 26 (iii) on the basis of those findings and conclusions, affirm, modify, or
27 reverse a determination or redetermination.

28 [(3)] (4) If an appeal involves an issue of whether employment that a
29 claimant performed is covered employment:

- 30 (i) the hearing examiner shall give special notice of the issue and
31 appeal to the Secretary and employer; and
- 32 (ii) on receipt of the notice, the Secretary and employer shall be
33 parties to the proceeding and be given reasonable opportunity to offer evidence on
34 that issue.

1 [(4)] (5) The hearing examiner promptly shall mail to each party at the
2 last known address of the party or otherwise deliver to the party:

3 (i) notice of the decision of the hearing examiner; and

4 (ii) a copy of the decision and the findings of fact and conclusions of
5 law that support the decision.

6 [(5)] (6) A decision under this subsection is final unless within 15 days
7 after the mailing or other delivery of notice of the decision, further review is initiated
8 under subsection (h) of this section.

9 (h) (1) When a party files an appeal of a decision under subsection (g) of this
10 section:

11 (i) if the hearing examiner did not affirm the determination or
12 redetermination of the claim, the Board of Appeals shall allow the appeal; and

13 (ii) if the hearing examiner affirmed the determination or
14 redetermination, the Board of Appeals may allow the appeal.

15 (2) On the filing of an appeal or on its own motion, the Board of Appeals
16 may affirm, modify, or reverse the findings and conclusions of a hearing examiner on
17 the basis of evidence that was submitted previously in the case or that the Board of
18 Appeals directs to be taken.

19 (3) The Board of Appeals promptly shall mail notice of its decision,
20 including its findings and conclusions, to the last known address of each party or
21 otherwise deliver the notice. The decision is final subject to judicial review after 10
22 days after the mailing or other delivery.

23 (4) If the Board of Appeals does not allow an appeal of a decision of a
24 hearing examiner:

25 (i) the decision of the hearing examiner is considered to be a
26 decision of the Board of Appeals;

27 (ii) the decision is subject to judicial review within the time and in
28 the manner provided for a final decision of the Board of Appeals; and

29 (iii) the time for appeal begins on the date of the notice of the order
30 of denial of the application for appeal to the Board of Appeals.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 1998.

