

# HOUSE BILL 432

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

Introduced and read first time: January 28, 2008

Assigned to: Economic Matters

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Committee Report: Favorable

House action: Adopted

Read second time: March 15, 2008

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

1 AN ACT concerning

2 **Department of Labor, Licensing, and Regulation – Unemployment Insurance**  
3 **Claims – Lower Appeals Division**

4 FOR the purpose of establishing a Lower Appeals Division in the Department of  
5 Labor, Licensing, and Regulation for unemployment insurance claims; requiring  
6 the Secretary of Labor, Licensing, and Regulation to appoint a chief hearing  
7 examiner as head of the Lower Appeals Division; requiring the chief hearing  
8 examiner to be in a certain professional service in accordance with certain  
9 provisions of law; requiring the chief hearing examiner, subject to the approval  
10 of the Secretary, to appoint certain personnel; requiring the Secretary to have  
11 certain authority over certain personnel; requiring the Lower Appeals Division  
12 to hear and decide certain appeals; requiring the Secretary to adopt certain  
13 regulations under certain circumstances; authorizing certain hearing examiners  
14 to administer certain oaths, certify certain acts, and take certain depositions;  
15 authorizing certain hearing examiners to issue certain subpoenas for certain  
16 purposes; specifying that certain subpoenas must be served in a certain manner;  
17 authorizing certain courts to pass certain orders directing certain compliance  
18 with certain subpoenas; prohibiting certain persons from being excused from  
19 attending certain proceedings for certain grounds; prohibiting prosecution or  
20 certain penalties or certain forfeitures under certain circumstances; authorizing  
21 certain prosecutions and certain punishment for certain perjury; requiring  
22 certain hearing examiners to conduct certain hearings or appeals in a certain  
23 manner; specifying that certain hearing examiners are not bound by certain  
24 rules of evidence or certain rules of procedure; requiring certain hearing  
25 examiners to consider certain evidence; prohibiting certain hearing examiners

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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 from participating in certain proceedings; providing that the status of the  
 2 Secretary as a party to a case may not constitute certain interest relating to  
 3 certain hearing examiners; subjecting certain ex parte communications to  
 4 certain provisions of law; providing for a certain exception to provisions of law  
 5 relating to certain ex parte communications; authorizing certain hearing  
 6 examiners to consolidate certain claims under certain circumstances;  
 7 authorizing certain hearing officers who consolidate certain claims to make  
 8 certain administrative and evidential determinations; requiring certain records  
 9 to be kept; requiring certain testimony to be transcribed; authorizing certain  
 10 compensation for certain witnesses; prohibiting the Lower Appeals Division  
 11 from charging certain fees; requiring certain hearing examiners to give certain  
 12 notice that includes certain information by certain methods; authorizing certain  
 13 claimants to be represented by certain lawyers or certain agents; authorizing  
 14 certain lawyers to charge and accept certain compensation; prohibiting certain  
 15 agents from charging or accepting certain compensation; authorizing certain  
 16 employers to appear pro se or with certain representation; prohibiting the  
 17 solicitation of certain appearances on behalf of certain claimants; authorizing  
 18 certain appeals; authorizing the Secretary to be a party to certain appeals;  
 19 requiring certain hearing examiners to give certain opportunity for a fair  
 20 hearing to certain parties, make certain findings, and affirm, modify, or reverse  
 21 certain determinations or redeterminations under certain circumstances;  
 22 requiring certain hearing examiners to provide certain parties certain notice  
 23 and certain copies of certain decisions; providing that certain decisions of  
 24 certain hearing examiners are final unless further review is initiated under  
 25 certain provisions of law; clarifying certain personnel appointed by the Board of  
 26 Appeals; requiring the Board of Appeals to hear and decide certain appeals from  
 27 the Lower Appeals Division; authorizing the chief hearing examiner of the  
 28 Lower Appeals Division to extend the time for certain appeals; authorizing  
 29 certain claimants to appeal to the Lower Appeals Division under certain  
 30 circumstances; correcting certain cross-references; providing for the correction  
 31 of certain references by the publishers of the Annotated Code; defining certain  
 32 terms; and generally relating to the Lower Appeals Division of the Department  
 33 of Labor, Licensing, and Regulation.

34 BY renumbering

35 Article – Labor and Employment

36 Section 8–101(t) through (y), respectively; and 8–501 through 8–503, 8–504  
 37 through 8–508, and 8–510 through 8–512, respectively, and the subtitle  
 38 “Subtitle 5. Board of Appeals of Department of Labor, Licensing, and  
 39 Regulation”

40 to be Section 8–101(u) through (z), respectively; and 8–5A–01 through 8–5A–03  
 41 and 8–5A–05 through 8–5A–12, respectively, and the subtitle “Subtitle  
 42 5A. Board of Appeals of the Department of Labor, Licensing, and  
 43 Regulation”

44 Annotated Code of Maryland

45 (1999 Replacement Volume and 2007 Supplement)

46 BY repealing

1 Article – Labor and Employment  
2 Section 8–509  
3 Annotated Code of Maryland  
4 (1999 Replacement Volume and 2007 Supplement)

5 BY repealing and reenacting, without amendments,  
6 Article – Labor and Employment  
7 Section 8–101(a) and (f)  
8 Annotated Code of Maryland  
9 (1999 Replacement Volume and 2007 Supplement)

10 BY adding to  
11 Article – Labor and Employment  
12 Section 8–101(t); 8–501 through 8–508 to be under the new subtitle “Subtitle 5.  
13 Lower Appeals Division of the Department of Labor, Licensing, and  
14 Regulation”; and 8–5A–04  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2007 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Labor and Employment  
19 Section 8–602(c)(4), 8–621(d), and 8–806  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume and 2007 Supplement)

22 BY repealing and reenacting, without amendments,  
23 Article – Labor and Employment  
24 Section 8–5A–01  
25 Annotated Code of Maryland  
26 (1999 Replacement Volume and 2007 Supplement)  
27 (As enacted by Section 1 of this Act)

28 BY repealing and reenacting, with amendments,  
29 Article – Labor and Employment  
30 Section 8–5A–03(c)(1), 8–5A–05(a), 8–5A–07(a), (c), and (d), 8–5A–08,  
31 8–5A–10(a) and (b), and 8–5A–11  
32 Annotated Code of Maryland  
33 (1999 Replacement Volume and 2007 Supplement)  
34 (As enacted by Section 1 of this Act)

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
36 MARYLAND, That Section(s) 8–101(t) through (y), respectively; and 8–501 through  
37 8–503, 8–504 through 8–508, and 8–510 through 8–512, respectively, and the subtitle  
38 “Subtitle 5. Board of Appeals of Department of Labor, Licensing, and Regulation” of  
39 Article – Labor and Employment of the Annotated Code of Maryland be renumbered to  
40 be Section(s) 8–101(u) through (z), respectively; and 8–5A–01 through 8–5A–03 and  
41 8–5A–05 through 8–5A–12, respectively, and the subtitle “Subtitle 5A. Board of  
42 Appeals of the Department of Labor, Licensing, and Regulation”.

1 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 8–509 of  
2 Article – Labor and Employment of the Annotated Code of Maryland be repealed.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
4 read as follows:

5 **Article – Labor and Employment**

6 **8–101.**

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

8 (f) “Board of Appeals” means the Board of Appeals of the Department of  
9 Labor, Licensing, and Regulation.

10 (T) **“LOWER APPEALS DIVISION” MEANS THE LOWER APPEALS**  
11 **DIVISION OF THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

12 **SUBTITLE 5. LOWER APPEALS DIVISION OF THE DEPARTMENT OF LABOR,**  
13 **LICENSING, AND REGULATION.**

14 **8–501.**

15 **THERE IS A LOWER APPEALS DIVISION IN THE DEPARTMENT.**

16 **8–502.**

17 (A) (1) **THE SECRETARY SHALL APPOINT A CHIEF HEARING**  
18 **EXAMINER AS HEAD OF THE LOWER APPEALS DIVISION.**

19 (2) **THE CHIEF HEARING EXAMINER SHALL BE IN THE**  
20 **PROFESSIONAL SERVICE IN ACCORDANCE WITH § 6–402 OF THE STATE**  
21 **PERSONNEL AND PENSIONS ARTICLE.**

22 (B) (1) **SUBJECT TO THE APPROVAL OF THE SECRETARY, THE CHIEF**  
23 **HEARING EXAMINER SHALL APPOINT THE NUMBER OF HEARING EXAMINERS**  
24 **AND OTHER PERSONNEL NEEDED FOR THE EFFECTIVE PERFORMANCE OF THE**  
25 **LOWER APPEALS DIVISION.**

26 (2) **THE SECRETARY SHALL HAVE ADMINISTRATIVE AUTHORITY**  
27 **OVER ALL PERSONNEL.**

28 **8–503.**

1           **THE LOWER APPEALS DIVISION SHALL HEAR AND DECIDE APPEALS**  
2 **FROM THE DETERMINATIONS OF THE CLAIMS EXAMINERS.**

3 **8-504.**

4           **THE SECRETARY, WITH THE ADVICE OF THE CHIEF HEARING EXAMINER,**  
5 **SHALL ADOPT REGULATIONS, IN ACCORDANCE WITH § 10-206 OF THE STATE**  
6 **GOVERNMENT ARTICLE, TO GOVERN APPEALS AND HEARINGS BEFORE THE**  
7 **HEARING EXAMINERS.**

8 **8-505.**

9           **(A) TO ENFORCE THIS SUBTITLE, A HEARING EXAMINER MAY:**

10                   **(1) ADMINISTER AN OATH;**

11                   **(2) CERTIFY TO AN OFFICIAL ACT; AND**

12                   **(3) TAKE A DEPOSITION.**

13           **(B) (1) TO ENFORCE THIS SUBTITLE, A HEARING EXAMINER MAY**  
14 **ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO TESTIFY OR FOR**  
15 **THE PRODUCTION OF BOOKS, CORRESPONDENCE, MEMORANDA, PAPERS, AND**  
16 **OTHER RECORDS.**

17                   **(2) A SUBPOENA ISSUED UNDER THIS SUBSECTION SHALL BE**  
18 **SERVED IN ANY MANNER IN WHICH COURT SUBPOENAS ARE AUTHORIZED TO BE**  
19 **SERVED.**

20                   **(3) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED**  
21 **UNDER THIS SUBSECTION, ON A COMPLAINT FILED BY THE CHIEF HEARING**  
22 **EXAMINER OR AN AUTHORIZED REPRESENTATIVE OF THE CHIEF HEARING**  
23 **EXAMINER, THE CIRCUIT COURT FOR THE COUNTY WHERE THE INVESTIGATION**  
24 **OR HEARING IS CONDUCTED OR THE PERSON IS PRESENT, RESIDES, OR**  
25 **TRANSACTS BUSINESS MAY PASS AN ORDER DIRECTING COMPLIANCE WITH THE**  
26 **SUBPOENA OR COMPELLING TESTIMONY.**

27                   **(4) (I) A PERSON MAY NOT BE EXCUSED FROM ATTENDING A**  
28 **PROCEEDING AND TESTIFYING OR PRODUCING BOOKS, CORRESPONDENCE,**  
29 **MEMORANDA, PAPERS, AND OTHER RECORDS BEFORE A HEARING EXAMINER IN**  
30 **OBEDIENCE TO A SUBPOENA ISSUED UNDER THIS SECTION ON THE GROUND**  
31 **THAT THE TESTIMONY OR EVIDENCE REQUIRED OF THE PERSON MAY TEND TO**  
32 **INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A PENALTY OR**  
33 **FORFEITURE.**

1                   (II) AFTER HAVING CLAIMED THE PRIVILEGE OF THE  
2 PERSON AGAINST SELF-INCRIMINATION, A PERSON MAY NOT BE PROSECUTED  
3 OR SUBJECTED TO ANY PENALTY OR FORFEITURE BECAUSE OF ANY  
4 TRANSACTION, MATTER, OR THING ABOUT WHICH THE PERSON IS COMPELLED  
5 TO TESTIFY OR PRODUCE EVIDENCE.

6                   (III) A PERSON MAY BE PROSECUTED AND PUNISHED FOR  
7 PERJURY COMMITTED IN TESTIFYING.

8 **8-506.**

9           (A) (1) A HEARING EXAMINER SHALL CONDUCT A HEARING OR  
10 APPEAL IN A MANNER THAT ASCERTAINS THE SUBSTANTIAL RIGHTS OF THE  
11 PARTIES.

12                   (2) (I) A HEARING EXAMINER IS NOT BOUND BY STATUTORY OR  
13 COMMON LAW RULES OF EVIDENCE OR TECHNICAL RULES OF PROCEDURE.

14                   (II) A HEARING EXAMINER SHALL CONSIDER EVIDENCE  
15 OFFERED IN ACCORDANCE WITH § 10-213 OF THE STATE GOVERNMENT  
16 ARTICLE.

17           (B) (1) (I) A HEARING EXAMINER MAY NOT PARTICIPATE IN ANY  
18 PROCEEDING IN WHICH THE HEARING EXAMINER HAS A DIRECT OR INDIRECT  
19 INTEREST.

20                   (II) THE STATUS OF THE SECRETARY AS A PARTY TO A CASE  
21 MAY NOT CONSTITUTE A DIRECT OR INDIRECT INTEREST AS TO A HEARING  
22 EXAMINER.

23                   (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
24 PARAGRAPH, EX PARTE COMMUNICATIONS ARE SUBJECT TO § 10-219 OF THE  
25 STATE GOVERNMENT ARTICLE.

26                   (II) SECTION 10-219(D) OF THE STATE GOVERNMENT  
27 ARTICLE DOES NOT APPLY TO EX PARTE COMMUNICATIONS UNDER THIS  
28 SUBTITLE.

29           (C) (1) A HEARING EXAMINER MAY CONSOLIDATE CLAIMS BY MORE  
30 THAN ONE INDIVIDUAL OR CLAIMS BY A SINGLE INDIVIDUAL FOR 2 OR MORE  
31 WEEKS OF UNEMPLOYMENT IF:

1                   (I)    THE SAME OR SUBSTANTIALLY SIMILAR EVIDENCE IS  
2 RELEVANT AND MATERIAL TO THE MATTERS AT ISSUE; AND

3                   (II)   IN THE JUDGMENT OF THE HEARING EXAMINER, THE  
4 CONSOLIDATION WOULD NOT BE PREJUDICIAL TO A PARTY.

5                   (2)    WHEN CLAIMS ARE CONSOLIDATED UNDER THIS SUBSECTION,  
6 THE HEARING EXAMINER MAY:

7                   (I)    SET THE SAME TIME AND PLACE FOR CONSIDERING  
8 EACH CLAIM;

9                   (II)   CONDUCT JOINT HEARINGS;

10                  (III)   MAKE A SINGLE RECORD OF THE PROCEEDINGS; AND

11                  (IV)   CONSIDER EVIDENCE THAT IS INTRODUCED IN A  
12 PROCEEDING FOR ONE CLAIM AS HAVING BEEN INTRODUCED FOR ANOTHER  
13 CLAIM.

14                  (D)    (1)    A RECORD SHALL BE KEPT, IN ACCORDANCE WITH § 10-218  
15 OF THE STATE GOVERNMENT ARTICLE, OF ALL TESTIMONY AND PROCEEDINGS  
16 BEFORE A HEARING EXAMINER.

17                  (2)    TESTIMONY SHALL BE TRANSCRIBED IF:

18                  (I)    JUDICIAL REVIEW IS INITIATED; OR

19                  (II)   THE HEARING EXAMINER OR THE BOARD OF APPEALS  
20 ORDERS A TRANSCRIPTION.

21                  (E)    (1)    A WITNESS WHO IS SUBPOENAED UNDER THIS SUBTITLE IS  
22 ENTITLED TO COMPENSATION AT A RATE THAT THE CHIEF HEARING EXAMINER  
23 SETS.

24                  (2)    THE COMPENSATION OF A WITNESS WHO IS SUBPOENAED ON  
25 BEHALF OF THE LOWER APPEALS DIVISION OR A CLAIMANT SHALL BE  
26 CONSIDERED PART OF THE EXPENSE OF ADMINISTERING THIS TITLE.

27                  (F)    THE LOWER APPEALS DIVISION MAY NOT CHARGE A CLAIMANT A  
28 FEE IN ANY PROCEEDING UNDER THIS TITLE.

29                  (G)    (1)    A HEARING EXAMINER PROMPTLY SHALL GIVE EACH PARTY  
30 TO A PROCEEDING BEFORE IT WRITTEN NOTICE OF ITS DECISION BY MAILING

1 THE NOTICE TO EACH PARTY AT THE LAST KNOWN ADDRESS OF THE PARTY OR  
2 BUSINESS ADDRESS OF A LICENSEE IN ACCORDANCE WITH § 10-209(A) OF THE  
3 STATE GOVERNMENT ARTICLE, OR OTHERWISE DELIVERING THE NOTICE.

4 (2) THE NOTICE SHALL:

5 (I) INCLUDE THE FINDINGS OF FACT AND CONCLUSIONS OF  
6 LAW THAT SUPPORT THE DECISION;

7 (II) BE ACCOMPANIED BY ANY ORDER NECESSARY TO GIVE  
8 EFFECT TO THE DECISION; AND

9 (III) CONFORM TO THE REQUIREMENTS OF § 10-221 OF THE  
10 STATE GOVERNMENT ARTICLE.

11 **8-507.**

12 (A) IN A PROCEEDING BEFORE A HEARING EXAMINER, A CLAIMANT MAY  
13 BE REPRESENTED BY A LAWYER OR ANOTHER AGENT AUTHORIZED BY THE  
14 CLAIMANT.

15 (B) A LAWYER MAY CHARGE AND ACCEPT COMPENSATION IN AN  
16 AMOUNT NOT GREATER THAN THAT APPROVED BY THE CHIEF HEARING  
17 EXAMINER.

18 (C) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN  
19 AGENT MAY NOT CHARGE OR ACCEPT COMPENSATION FOR REPRESENTING A  
20 CLAIMANT IN A PROCEEDING BEFORE A HEARING EXAMINER.

21 (D) IN A PROCEEDING BEFORE A HEARING EXAMINER, AN EMPLOYER  
22 MAY APPEAR PRO SE OR BE REPRESENTED BY A LAWYER OR ANOTHER AGENT  
23 AUTHORIZED BY THE EMPLOYER.

24 (E) A PERSON MAY NOT SOLICIT, FOR THAT PERSON OR ANOTHER  
25 PERSON, THE BUSINESS OF APPEARING ON BEHALF OF A CLAIMANT IN A  
26 PROCEEDING BEFORE A HEARING EXAMINER.

27 **8-508.**

28 (A) AN INDIVIDUAL WHO FILES A CLAIM FOR BENEFITS OR AN  
29 EMPLOYER ENTITLED TO NOTICE OF A DETERMINATION OR REDETERMINATION  
30 OF THE CLAIM MAY FILE AN APPEAL WITH THE LOWER APPEALS DIVISION  
31 WITHIN 15 DAYS AFTER NOTICE OF THE DETERMINATION OR  
32 REDETERMINATION IS MAILED TO THE CLAIMANT OR EMPLOYER AT THE LAST



1 KNOWN ADDRESS OF THE CLAIMANT OR EMPLOYER OR OTHERWISE IS  
2 DELIVERED.

3 (B) THE SECRETARY, AT THE SECRETARY'S DISCRETION, MAY BE A  
4 PARTY TO AN APPEAL FILED BY A CLAIMANT OR EMPLOYING UNIT WITH THE  
5 LOWER APPEALS DIVISION.

6 (C) UNLESS AN APPEAL FILED UNDER SUBSECTION (A) OF THIS  
7 SECTION IS WITHDRAWN OR REMOVED TO THE BOARD OF APPEALS, A HEARING  
8 EXAMINER SHALL:

9 (1) GIVE THE PARTIES A REASONABLE OPPORTUNITY FOR A FAIR  
10 HEARING IN ACCORDANCE WITH THE NOTICE PROVISIONS IN §§ 10-207 AND  
11 10-208 OF THE STATE GOVERNMENT ARTICLE, EXCEPT THAT THE NOTICE IS  
12 NOT SUBJECT TO § 10-208(B)(4) AND (7) OF THE STATE GOVERNMENT  
13 ARTICLE;

14 (2) MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW, BASED  
15 ON A PREPONDERANCE OF EVIDENCE, IN ACCORDANCE WITH § 10-217 OF THE  
16 STATE GOVERNMENT ARTICLE; AND

17 (3) ON THE BASIS OF THE FINDINGS OF FACT AND CONCLUSIONS  
18 OF LAW, AFFIRM, MODIFY, OR REVERSE A DETERMINATION OR  
19 REDETERMINATION.

20 (D) THE HEARING EXAMINER PROMPTLY SHALL GIVE EACH PARTY:

21 (1) NOTICE OF THE DECISION OF THE HEARING EXAMINER IN  
22 ACCORDANCE WITH § 10-221 OF THE STATE GOVERNMENT ARTICLE; AND

23 (2) A COPY OF THE DECISION AND THE FINDINGS OF FACT AND  
24 CONCLUSIONS OF LAW THAT SUPPORT THE DECISION.

25 (E) THE DECISION OF THE HEARING EXAMINER IS FINAL UNLESS  
26 FURTHER REVIEW IS INITIATED UNDER § 8-5A-10 OF THIS TITLE.

27 8-5A-01.

28 There is a Board of Appeals in the Department.

29 8-5A-03.

30 (c) (1) Subject to the approval of the Board of Appeals, the Secretary shall  
31 appoint the number of [hearing examiners and other] personnel that the Board of

1 Appeals needs for effective and proper performance of the appeals procedures under  
2 this [title] **SUBTITLE**.

3 **8-5A-04.**

4 **THE BOARD SHALL HEAR AND DECIDE APPEALS FROM THE DECISIONS OF**  
5 **THE LOWER APPEALS DIVISION AND CLAIMS FOR BENEFITS REFERRED BY THE**  
6 **SECRETARY UNDER § 8-5A-09 OF THIS SUBTITLE.**

7 8-5A-05.

8 (a) Except as provided in subsection (b) of this section, the Board of Appeals  
9 shall adopt reasonable regulations, in accordance with § 10-206 of the State  
10 Government Article, to govern appeals and hearings under this [title] **SUBTITLE**.

11 8-5A-07.

12 (a) (1) A [hearing examiner,] special examiner[,] and the Board of  
13 Appeals shall conduct a hearing or appeal in a manner that ascertains the substantial  
14 rights of the parties.

15 (2) (i) A [hearing examiner,] special examiner[,] and the Board of  
16 Appeals are not bound by statutory or common law rules of evidence or technical rules  
17 of procedure.

18 (ii) A [hearing examiner,] special examiner[,] and the Board of  
19 Appeals shall consider evidence offered in accordance with § 10-213 of the State  
20 Government Article.

21 (c) (1) A [hearing examiner,] special examiner[,] or the Board of Appeals  
22 may consolidate claims by more than 1 individual or claims by a single individual for 2  
23 or more weeks of unemployment if:

24 (i) the same or substantially similar evidence is relevant and  
25 material to the matters at issue; and

26 (ii) in the judgment of the [hearing examiner,] special  
27 examiner[,] or the Board of Appeals, the consolidation would not be prejudicial to a  
28 party.

29 (2) When claims are consolidated under this subsection, the [hearing  
30 examiner,] special examiner[,] or Board of Appeals may:

31 (i) set the same time and place for considering each claim;

32 (ii) conduct joint hearings;

1 (iii) make a single record of the proceedings; and

2 (iv) consider evidence that is introduced in a proceeding for 1  
3 claim as having been introduced for another claim.

4 (d) (1) A record shall be kept, in accordance with § 10–218 of the State  
5 Government Article, of all testimony and proceedings before a [hearing examiner,]  
6 special examiner[,] or the Board of Appeals.

7 (2) Testimony need not be transcribed unless:

8 (i) judicial review is initiated; or

9 (ii) the Board of Appeals orders a transcription.

10 8–5A–08.

11 (a) In a proceeding before a [hearing examiner,] special examiner[,] or the  
12 Board of Appeals, a claimant may be represented by a lawyer or another agent  
13 authorized by the claimant.

14 (b) An agent may not charge or accept compensation for representing a  
15 claimant in a proceeding before a [hearing examiner,] special examiner[,] or the  
16 Board of Appeals except that a lawyer may charge and accept compensation in an  
17 amount not greater than that approved by the Board of Appeals.

18 (c) In a proceeding before a [hearing examiner,] special examiner[,] or the  
19 Board of Appeals, an employer may appear for itself or be represented by a lawyer or  
20 another agent authorized by the employer.

21 (d) A person may not solicit, for that person or another person, the business  
22 of appearing on behalf of a claimant in a proceeding before a [hearing examiner,]  
23 special examiner[,] or the Board of Appeals.

24 8–5A–10.

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

29 (b) After a hearing examiner makes a final decision under § [8–509] **8–508**  
30 of this [subtitle] **TITLE**:

1 (1) if the hearing examiner does not affirm the determination or  
2 redetermination of a claim, the Board of Appeals shall allow an appeal by either the  
3 Secretary, or a party entitled to notice of the decision, or both; and

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

7 8-5A-11.

8 [(a)] A decision of the Board of Appeals is final subject to judicial review under  
9 [§ 8-512] § ~~8-5A-12~~ of this subtitle.

10 [(b)] A decision of the Board of Appeals under § 8-806(h) of this title is final  
11 within 10 days after mailing or other delivery of the notice of the decision.]

12 8-602.

13 (c) (4) The Board of Appeals shall give the parties a reasonable  
14 opportunity for a fair hearing as provided under Subtitle [5] ~~5A~~ of this title.

15 8-621.

16 (d) Proceedings on appeal to the Board of Appeals from the amount of a bill  
17 or a redetermination of the amount shall be in accordance with Subtitle [5] ~~5A~~ of this  
18 title.

19 8-806.

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

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

25 (i) conduct a predetermination proceeding; and

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

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

30 (i) a disqualification based on a stoppage of work due to a labor  
31 dispute;

1 (ii) multiple claims; or

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

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

5 (c) (1) Every initial determination shall state:

6 (i) whether the claimant has been paid the wages required by §  
7 8–802 of this subtitle;

8 (ii) the weekly benefit amount of the claimant for the benefit  
9 year; and

10 (iii) the maximum benefits payable to the claimant for the  
11 benefit year.

12 (2) Each determination shall include a statement as to:

13 (i) whether a claimant is eligible for benefits for the week for  
14 which the determination is made;

15 (ii) the benefits to which the claimant is entitled; and

16 (iii) the reasons for the determination.

17 (d) (1) On determination of a claim, the Secretary promptly shall mail  
18 notice of the determination to the claimant at the last known address of the claimant  
19 or otherwise deliver it to the claimant.

20 (2) Except as provided in paragraph (3) of this subsection, on  
21 determination of a claim that involves application of § 8–903(a) of this title or  
22 disqualification under Subtitle 10 of this title, the Secretary promptly shall:

23 (i) mail notice of the determination to the last employing unit of  
24 the claimant at the last known address of the employing unit or otherwise deliver it to  
25 that employer; and

26 (ii) include in the notice the reasons for the determination.

27 (3) If, before a determination, an employer fails to indicate, in  
28 accordance with regulations of the Secretary, that a claimant may be disqualified or  
29 ineligible for benefits, the Secretary need not notify the employer of the determination.

30 (e) (1) A determination is final as to a claimant and an employer who is  
31 entitled to notice of the determination unless:

1 (i) within 15 days after the mailing or other delivery of the  
2 notice, the claimant or employer appeals the determination; or

3 (ii) after the time for an appeal on an initial determination has  
4 passed, the Secretary may make a redetermination under subsection (f) of this section.

5 (2) The [Board of Appeals] **CHIEF HEARING EXAMINER OF THE**  
6 **LOWER APPEALS DIVISION**, for good cause, may extend the time for an appeal  
7 under this subsection.

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

10 (i) the eligibility of the claimant to receive benefits;

11 (ii) the weekly benefit amount of the claimant;

12 (iii) the maximum benefits payable to the claimant in a benefit  
13 year; and

14 (iv) the decision to recover an overpayment.

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

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

20 (g) (1) Within 15 days after the date of mailing of the notice or the date of  
21 delivery, a claimant or employing unit entitled to notice of a determination or  
22 redetermination under this section may appeal to the [Board of Appeals] **LOWER**  
23 **APPEALS DIVISION**.

24 (2) The Secretary may, at the Secretary's discretion, be a party to an  
25 appeal filed by a claimant or employing unit with the [Board of Appeals] **LOWER**  
26 **APPEALS DIVISION**.

27 (3) Unless an appeal of a determination or redetermination under this  
28 section is withdrawn or removed to the Board of Appeals, a hearing examiner  
29 designated by the Board of Appeals shall:

30 (i) give the parties a reasonable opportunity for a fair hearing  
31 in accordance with the notice provisions in §§ 10-207 and 10-208 of the State  
32 Government Article, except that the provisions of § 10-208(b)(4) and (7) do not apply;

33 (ii) make findings of fact and conclusions of law; and

1 (iii) on the basis of those findings and conclusions, affirm,  
2 modify, or reverse a determination or redetermination.

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

5 (i) the hearing examiner shall give special notice of the issue  
6 and appeal to the Secretary and employer; and

7 (ii) on receipt of the notice, the Secretary and employer shall be  
8 parties to the proceeding and be given reasonable opportunity to offer evidence on that  
9 issue.

10 (5) The hearing examiner promptly shall mail to each party at the last  
11 known address of the party or otherwise deliver to the party:

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

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

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

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

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

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

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

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

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

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

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

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

7 SECTION 4. AND BE IT FURTHER ENACTED, That the publishers of the  
8 Annotated Code, in consultation with the Department of Legislative Services, shall  
9 correct all erroneous references in the Code to the former "Subtitle 5. Board of Appeals  
10 of Department of Labor, Licensing, and Regulation", as amended by Section 1 of this  
11 Act to be "Subtitle 5A. Board of Appeals of the Department of Labor, Licensing, and  
12 Regulation", of the Labor and Employment Article.

13 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.