

SENATE BILL 635

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By: **Senator Lam**

Introduced and read first time: February 3, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance – Appeals and Recovery of Overpayment of Benefits**
3 **Procedures – Revisions**

4 FOR the purpose of requiring the Secretary of Labor to delegate to the Office of
5 Administrative Hearings the authority to hold contested case hearings under certain
6 circumstances; requiring the Secretary to conduct a predetermination investigation
7 before seeking the recovery of unemployment insurance benefits paid to a claimant;
8 altering certain procedures by which the Secretary may recover an overpayment of
9 unemployment insurance benefits; and generally relating to unemployment
10 insurance benefits and appeals.

11 BY repealing and reenacting, without amendments,
12 Article – Labor and Employment
13 Section 8–101(a) and 8–1305(b)(2)(i)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2021 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Labor and Employment
18 Section 8–101(u–1) and (x–1), 8–503, 8–5A–04, 8–5A–09, 8–809, and 8–1305(b)(2)(ii)
19 Annotated Code of Maryland
20 (2016 Replacement Volume and 2021 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 10–203(a)(5)
24 Annotated Code of Maryland
25 (2021 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Labor and Employment**

2 8–101.

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

4 (u–1) **(1)** “Mailed or otherwise delivered” means to cause to be delivered by
5 [electronic transmission] **E–MAILING** or physical mailing.

6 **(2)** **“MAILED OR OTHERWISE DELIVERED” INCLUDES TO CAUSE TO BE**
7 **DELIVERED BY THE INCLUSION OF A DOCUMENT IN OR ATTACHMENT OF A**
8 **DOCUMENT TO AN E–MAIL.**

9 **(3)** **“MAILED OR OTHERWISE DELIVERED” DOES NOT INCLUDE**
10 **POSTING ON AN ONLINE PORTAL.**

11 (x–1) **(1)** “Send” means to cause to be delivered by [electronic transmission]
12 **E–MAILING** or physical mailing.

13 **(2)** **“SEND” INCLUDES TO CAUSE TO BE DELIVERED BY THE**
14 **INCLUSION OF A DOCUMENT IN OR THE ATTACHMENT OF A DOCUMENT TO AN**
15 **E–MAIL.**

16 **(3)** **“SEND” DOES NOT INCLUDE POSTING ON AN ONLINE PORTAL.**

17 8–503.

18 **(A)** **[The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE**
19 **Lower Appeals Division shall hear and decide appeals from:**

20 (1) the determinations of the claims examiners; and

21 (2) review determination decisions.

22 **(B)** **IF A CLAIMANT APPEALS A RECOVERY OF BENEFITS BY THE SECRETARY**
23 **UNDER § 8–809 OF THIS TITLE IN ACCORDANCE WITH THE PROCEDURES FOR**
24 **REQUESTING AN APPEAL UNDER THIS TITLE, THE SECRETARY SHALL DELEGATE TO**
25 **THE OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY TO HOLD A**
26 **CONTESTED CASE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE**
27 **STATE GOVERNMENT ARTICLE.**

28 8–5A–04.

1 **(A) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE**
2 Board shall hear and decide appeals from the decisions of the Lower Appeals Division and
3 claims for benefits referred by the Secretary under § 8-5A-09 of this subtitle.

4 **(B) THE SECRETARY SHALL DELEGATE TO THE OFFICE OF**
5 **ADMINISTRATIVE HEARINGS THE AUTHORITY TO HOLD A CONTESTED CASE**
6 **HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE**
7 **GOVERNMENT ARTICLE IF A CLAIMANT OR AN EMPLOYER:**

8 **(1) APPEALS A DECISION OF THE LOWER APPEALS DIVISION IN**
9 **ACCORDANCE WITH THE PROCEDURES FOR REQUESTING AN APPEAL UNDER THIS**
10 **TITLE; AND**

11 **(2) REQUESTS THAT THE OFFICE OF ADMINISTRATIVE HEARINGS**
12 **CONDUCT THE APPEAL HEARING.**

13 8-5A-09.

14 **(a) [The] EXCEPT AS PROVIDED IN § 8-503(B) OF THIS TITLE AND §**
15 **8-5A-04(B) OF THIS SUBTITLE, THE Secretary shall refer a claim for benefits to the**
16 **Board of Appeals if the determination of the claim involves:**

17 (1) a disqualification that is based on a stoppage of work because of a labor
18 dispute;

19 (2) multiple claims; or

20 (3) a difficult issue of fact or law.

21 **(b) The Board of Appeals:**

22 (1) promptly shall hear and decide a claim that the Secretary refers under
23 this section; and

24 (2) may designate a special examiner to hear and decide the claim.

25 8-809.

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

28 (1) the claimant was not unemployed;

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

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

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

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

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

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

18 (c) (1) **BEFORE THE SECRETARY MAKES A FINDING UNDER SUBSECTION**
19 **(A) OR (B) OF THIS SECTION, THE SECRETARY SHALL CONDUCT A**
20 **PREDETERMINATION INVESTIGATION BY:**

21 **(I) PROMPTLY SENDING WRITTEN NOTICE TO THE CLAIMANT**
22 **THAT INCLUDES THE FOLLOWING INFORMATION:**

23 **1. THAT THE SECRETARY BELIEVES THE CLAIMANT MAY**
24 **HAVE BEEN OVERPAID;**

25 **2. THE SPECIFIC ALLEGED FACTS OR LEGAL BASIS FOR**
26 **THE SECRETARY'S BELIEF THAT THE CLAIMANT MAY HAVE BEEN OVERPAID; AND**

27 **3. INSTRUCTIONS THAT EXPLAIN HOW THE CLAIMANT**
28 **MAY CONTEST THE BASIS FOR THE SECRETARY'S BELIEF THAT THE CLAIMANT MAY**
29 **HAVE BEEN OVERPAID; AND**

30 **(II) ALLOWING THE CLAIMANT 30 DAYS AFTER MAILING OR**
31 **OTHER DELIVERY OF THE WRITTEN NOTICE REQUIRED UNDER THIS PARAGRAPH TO**
32 **RESPOND IN WRITING OR BY TELEPHONE, AS CHOSEN BY THE CLAIMANT.**

33 **(2) [If] AFTER THE PREDETERMINATION INVESTIGATION UNDER THIS**
34 **SUBSECTION IS COMPLETED, IF the Secretary decides to recover benefits from a claimant**

1 under subsection (a) or (b) of this section, the Secretary shall [notify] **SEND WRITTEN**
2 **NOTICE TO** the claimant of:

3 (i) the amount to be recovered;

4 (ii) the basis for the recovery of benefits, including [any evidence]
5 **THE FACTUAL AND EVIDENTIARY INFORMATION** that the Secretary used to make the
6 determination;

7 (iii) the weeks for which benefits were paid;

8 (iv) [the amount of any] **WHETHER THE SECRETARY HAS**
9 **ASSESSED ANY** monetary penalty [assessed] under subsection (b)(2) of this section and, **IF**
10 **SO, THE PRECISE AMOUNT OF THE MONETARY PENALTY AND** the [reason] **SPECIFIC**
11 **FACTUAL AND EVIDENTIARY BASIS** for the assessment of the monetary penalty;

12 (v) the provision of this title under which the Secretary determined
13 that the claimant was ineligible for benefits; [and]

14 (vi) the appeal rights available to a claimant, **INCLUDING**
15 **INSTRUCTIONS THAT EXPLAIN:**

16 1. **THAT THE CLAIMANT MAY APPEAL AN OVERPAYMENT**
17 **DETERMINATION WITH A FAIR HEARING BEFORE THE OFFICE OF ADMINISTRATIVE**
18 **HEARINGS; AND**

19 2. **HOW AND WHEN TO APPEAL THE OVERPAYMENT**
20 **DETERMINATION; AND**

21 **(VII) HOW AND WHEN TO FILE AN APPLICATION TO REQUEST A**
22 **WAIVER OF THE OVERPAYMENT RECOUPMENT.**

23 **[(2)] (3)** The Secretary shall allow a claimant to appeal a determination
24 regarding the recovery of benefits within 30 days after the mailing or other delivery of the
25 notice **UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

26 (d) (1) **[The] SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE**
27 Secretary may recover an amount under subsection (a) of this section:

28 (i) by deduction from benefits payable to the claimant in the future;

29 (ii) in the manner provided in § 8–630 of this title for the collection
30 of past due contributions;

1 (iii) by assessment in the same manner as provided in § 8–629 of this
2 title for the assessment of past due contributions; or

3 (iv) through other reasonable means of collection, including those
4 permitted under:

- 5 1. State law for the collection of debts owed to the State; or
- 6 2. federal law.

7 (2) (i) If the Secretary seeks to recover an amount under subsection (a)
8 of this section by assessment, the Secretary shall allow a claimant to elect, within 30 days
9 of the date of the notice of assessment, to have the amount collected by suit instead of by
10 assessment.

11 (ii) The Secretary shall adopt regulations to provide general
12 guidance about:

- 13 1. the processes under which the Secretary may recover
14 benefits; and
- 15 2. the application of § 8–629 of this title to the recovery of
16 benefits by assessment under this section.

17 (e) **[The] SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE** Secretary may
18 recover an amount under subsection (b) of this section:

19 (1) in the manner provided in § 8–630 of this title for the collection of past
20 due contributions;

21 (2) through other reasonable means of collection, including those permitted
22 under:

- 23 (i) State law for the collection of debts owed to the State; or
- 24 (ii) federal law; or

25 (3) if the deduction is made by another jurisdiction under an
26 intergovernmental agreement providing for the recovery of overpaid benefits, by deduction
27 from benefits for which the claimant is eligible in the future under the law of the
28 jurisdiction that made the deduction, excluding the monetary penalty assessed under
29 subsection (b)(2) of this section and interest due under subsection (b)(3) of this section.

30 (f) **THE SECRETARY MAY NOT RECOVER AN AMOUNT UNDER SUBSECTION**
31 **(D) OR (E) OF THIS SECTION UNTIL THE REQUIREMENTS OF SUBSECTION (C) OF THIS**
32 **SECTION HAVE BEEN MET.**

1 **(G)** (1) The Secretary may reconsider a decision to recover benefits under
2 subsection (a) of this section within 1 year after the date that the decision was made.

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

6 (3) If an amount under subsection (a) or (b) of this section has not been
7 recovered within 5 years after the date of the decision to recover the amount, the Secretary
8 may consider the amount uncollectible.

9 (4) If the Secretary determines that the best interests of the State will be
10 served, the Secretary may adjust, compromise, or settle interest due under subsection (b)
11 of this section or under § 8–1305 of this title.

12 **[(g)] (H)** Notwithstanding any other provision of this section, the Secretary may
13 recover, under a governmental offset agreement, an overpayment of benefits paid to any
14 claimant under:

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

16 (2) a federal unemployment insurance benefit program.

17 8–1305.

18 (b) In addition to the penalty under subsection (a) of this section, a person who
19 violates § 8–1301 of this subtitle:

20 (2) shall be disqualified from receiving benefits for any week of
21 unemployment, including the week in which a determination is made that the individual
22 filed a claim involving a false statement, false representation, or failure to disclose a
23 material fact, until:

24 (i) the Secretary determines that:

25 1. the benefit unlawfully received has been repaid in full; and

26 2. the monetary penalty of 15% and interest at a rate of 1.5%
27 a month on the total amount of benefit unlawfully received plus the monetary penalty have
28 been paid in full; or

29 (ii) the Secretary determines that:

30 1. in the Secretary's sole discretion under § **[8–809(f)(3)]**
31 **8–809(G)(3)** of this title, the benefit unlawfully received and interest are uncollectible; and

1 2. the claimant has paid the 15% monetary penalty in full;
2 and

3 **Article – State Government**

4 10–203.

5 (a) This subtitle does not apply to:

6 (5) unemployment insurance claim determinations, tax determinations,
7 and appeals in the Maryland Department of Labor except as specifically provided in
8 [Subtitle] **SUBTITLES 5 AND 5A** of Title 8 of the Labor and Employment Article; or

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2022.