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SB 635: Unemployment Insurance - Appeals and Recovery of Overpayment of Benefits Procedures - Revisions

Hearing before the Senate Finance Committee, March 15, 2022

Position: FAVORABLE WITH AMENDMENTS

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work through litigation and public policy. The **PJC SUPPORTS SB 635** and requests a **FAVORABLE** report on the bill and its sponsor amendments.

Tens of Thousands of Marylanders Face Unemployment Benefit Overpayments Because of Government Errors. Maryland's unemployment insurance program provides temporary financial assistance to eligible workers unemployed through no fault of their own. The COVID-19 pandemic overwhelmed state unemployment agencies. Unfortunately, this resulted in "a significant number of state errors and inaccuracies due to these fast-changing circumstances,"¹ according to the United States Department of Labor. Local news stations have reported that nearly 90,000 Marylanders face this overpayment problem.²

Unemployment Overpayment Practices Must Comply with Due Process and Federal Law. Before collecting unemployment benefits that were allegedly overpaid, state unemployment agencies, such as the Maryland Department of Labor ("MDL"), are required by federal law to provide individuals with due process protections, including by:

- (1) conducting a pre-determination investigation,
- (2) providing individuals with pre-determination notice that includes specific information about why an overpayment is suspected, and an opportunity to contest that information,
- (3) delivering – in a manner likely to actually reach the individual – a written determination with detailed factual and legal information so individuals can understand the basis of the overpayment, and
- (4) granting individuals full appeal rights because overpayments are ultimately denials of benefits.³

¹ U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21, Change 1 at 5 (Feb. 7, 2022), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_20-21_Change_1.pdf.

² See, e.g., Mallory Sofastaii, *Maryland Now Processing Waivers for Unemployment Claimants Who Were Overpaid* (Oct. 2021), <https://www.wmar2news.com/unemploymentguide/maryland-now-processing-waivers-for-unemployment-claimants-who-were-overpaid>.

³ U.S. Const. amend. XIV, § 2; 42 U.S.C. § 503(a)(3); U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 01-16 (Oct. 1, 2015), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf.

Maryland's Overpayment Determination Practices Deny Individuals Due Process and Violate Federal Law.

MDL has a history of failing to comply with any of these safeguards. The majority of callers seeking assistance from PJC for unemployment overpayment issues stated that (1) they never received notice that MDL was investigating a suspected overpayment, (2) they never had an opportunity to be heard before MDL imposed the overpayment, (3) any overpayment notices they did receive were only issued through the online portal known as BEACON and individuals often did not see them as a result, and (4) those notices did not include any factual or legal basis to explain why they were overpaid nor did they outline any appeal rights. Further, MDL has not allowed affected individuals to appeal overpayment notices; instead, MDL has said that it allows individuals to appeal a determination underlying the overpayment, which MDL frequently fails to even issue. This renders overpayments essentially unappealable. An unexplained, unappealable taking by the government of a person's money – with no notice or opportunity to be heard – is a textbook denial of due process.

Maryland's Overpayment Determination Practices Hurt Vulnerable Workers. Many Marylanders now face debts of \$15,000, \$20,000, or more – money they relied on during the worst months of the pandemic economic crisis – without ever having had a chance to explain why the overpayment determination is wrong.

Unemployment overpayments in Maryland can be recovered by offsetting the value of future benefits and tax refunds, or by civil action without limitation to the number of years that have passed since the overpayment was issued.⁴ Marylanders who are already struggling financially lack recourse from MDL's procedurally inadequate unemployment overpayment practices.

SB 635 Will Solve This Problem by Incorporating Existing Federal Requirements into State Law. SB 635 reiterates federal due process requirements in Maryland state law. The bill provides that, before issuing an overpayment determination, MDL must conduct an investigation and give the individual notice and an opportunity to be heard. It further provides that the overpayment determination include enough information to truly inform the individual of the reasons for the determination. It gives the individual the right to appeal the overpayment. Further, the bill greatly increases the likelihood that notice of an overpayment determination actually reaches individuals. In short, SB 635 will ensure that Marylanders who are already facing significant financial difficulties are not further pushed into a worse financial situation without requisite procedural safeguards.

For the foregoing reasons, the PJC **SUPPORTS SB 635** and urges a **FAVORABLE** report on the bill and the sponsor amendments. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

⁴ U.S. Dep't of Labor, Comparison of State Unemployment Laws 2020, Chapter 6 Overpayments, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf>.