

HOUSE BILL 354

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

Introduced and read first time: January 25, 2013

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Unemployment Insurance – Recovery of Benefits – Monetary Penalty for**
3 **Fraud**

4 FOR the purpose of authorizing the Secretary of Labor, Licensing, and Regulation to
5 recover from a claimant a certain monetary penalty under certain
6 circumstances; altering the amount of interest the Secretary may recover under
7 certain circumstances; requiring the Secretary to notify the claimant of the
8 amount of any monetary penalty assessed under a certain provision of law and
9 the reason for the assessment; excluding certain monetary penalties from the
10 requirement that certain money be paid into a certain fund; requiring a person
11 who violates a certain provision of law to pay a certain monetary penalty;
12 altering the amount of interest a person is required to pay for a violation of a
13 certain provision of law; excluding certain monetary penalties from the amount
14 that can be recovered by the Secretary through a certain method; providing for
15 the application of this Act; making a stylistic change; and generally relating to
16 the recovery of unemployment insurance benefits.

17 BY repealing and reenacting, with amendments,
18 Article – Labor and Employment
19 Section 8–404, 8–809, and 8–1305
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2012 Supplement)

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

24 **Article – Labor and Employment**

25 8–404.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) The State Treasurer is custodian of the Unemployment Insurance
2 Fund.

3 (2) The State Treasurer shall manage the Unemployment Insurance
4 Fund in accordance with regulations that the Secretary adopts.

5 (b) (1) In the Unemployment Insurance Fund, the State Treasurer shall
6 maintain as separate accounts:

7 (i) a clearing account;

8 (ii) an Unemployment Trust Fund Account; and

9 (iii) a benefit account.

10 (2) Under the direction of the Secretary, the Treasurer shall establish
11 the benefit and clearing accounts in any financial institution in which the General
12 Fund of the State may be deposited.

13 (3) The Unemployment Trust Fund Account shall be the account of the
14 State in the Federal Unemployment Trust Fund that is established and maintained in
15 accordance with § 904 of the Social Security Act notwithstanding any State law to the
16 contrary that relates to administration, deposit, disbursement, or release of money in
17 the custody of the State.

18 (c) (1) On receipt of any money payable to the Unemployment Insurance
19 Fund, the Secretary shall ensure immediate deposit of the money in the clearing
20 account as required by the State Treasurer.

21 (2) **[All] EXCEPT FOR MONETARY PENALTIES ASSESSED UNDER §**
22 **8-809(B)(2) OR § 8-1305(B)(1) OF THIS TITLE, ALL** money deposited in the
23 clearing account for the payment of fines, interest, or penalties shall be paid to the
24 Special Administrative Expense Fund.

25 (3) Subject to the direction of the Secretary, the State Treasurer may
26 pay refunds under Subtitle 6, Part V of this title from the clearing account.

27 (d) (1) Immediately after payments that are made under subsection (c)(2)
28 and (3) of this section have cleared, the State Treasurer shall deposit all money that
29 remains in the clearing account with the Secretary of the Treasury of the United
30 States to the credit of the account of the State in the Unemployment Trust Fund that
31 is established and maintained under § 904 of the Social Security Act.

32 (2) Money that is requisitioned from the account of the State in the
33 Unemployment Trust Fund shall be placed in the benefit account only for use in
34 accordance with paragraph (3) of this subsection.

1 (3) Subject to § 8–405 of this subtitle and in accordance with
2 regulations that the Secretary adopts, money in the benefit account:

3 (i) may be used to pay refunds under Subtitle 6, Part V of this
4 title;

5 (ii) shall be used to pay benefits; and

6 (iii) may be used to pay administrative expenses incurred to
7 carry out this title.

8 (e) The Unemployment Insurance Fund may not be used to pay a deposit
9 insurance premium in a financial institution in which the benefit and clearing
10 accounts are deposited.

11 8–809.

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

14 (1) the claimant was not unemployed;

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

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

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

22 (1) all benefits paid to the claimant for each week for which the false
23 statement or representation was made or for which the claimant failed to disclose a
24 material fact; [and]

25 **(2) A MONETARY PENALTY OF 15% OF ALL BENEFITS PAID TO THE**
26 **CLAIMANT FOR EACH WEEK FOR WHICH THE FALSE STATEMENT OR**
27 **REPRESENTATION WAS MADE OR FOR WHICH THE CLAIMANT FAILED TO**
28 **DISCLOSE A MATERIAL FACT; AND**

29 **[(2)] (3) interest of 1.5% per month on the amount OF ALL**
30 **BENEFITS PAID TO THE CLAIMANT FOR EACH WEEK FOR WHICH THE FALSE**
31 **STATEMENT OR REPRESENTATION WAS MADE OR FOR WHICH THE CLAIMANT**
32 **FAILED TO DISCLOSE A MATERIAL FACT PLUS THE AMOUNT OF THE MONETARY**

1 **PENALTY** accruing from the date that the claimant is notified by the Secretary that
2 the claimant was not entitled to benefits received.

3 (c) If the Secretary decides to recover benefits from a claimant under
4 subsection (a) or (b) of this section, the Secretary shall notify the claimant of:

5 (1) the amount to be recovered;

6 (2) the weeks for which benefits were paid; [and]

7 **(3) THE AMOUNT OF ANY MONETARY PENALTY ASSESSED UNDER**
8 **SUBSECTION (B)(2) OF THIS SECTION AND THE REASON FOR THE ASSESSMENT**
9 **OF THE MONETARY PENALTY; AND**

10 **[(3)] (4)** the provision of this title under which the Secretary
11 determined that the claimant was ineligible for benefits.

12 (d) The Secretary may recover an amount under subsection (a) or (b) of this
13 section:

14 (1) by deduction from benefits payable to the claimant in the future,
15 excluding **THE MONETARY PENALTY ASSESSED UNDER SUBSECTION (B)(2) OF**
16 **THIS SECTION AND** interest due [pursuant to] **UNDER** subsection **[(b)(2)] (B)(3)** of
17 this section; or

18 (2) in the manner provided in § 8-630 of this title for the collection of
19 past due contributions.

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

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

25 (3) If an amount has not been recovered within 5 years after the date
26 of the decision to recover the amount, the Secretary may consider the amount
27 uncollectible.

28 (f) Notwithstanding any other provision of this section, the Secretary may
29 recover, under a governmental offset agreement, an overpayment of benefits paid to
30 any claimant under:

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

32 (2) a federal unemployment insurance benefit program.

1 8-1305.

2 (a) Unless another penalty is provided by statute, a person who willfully
3 violates a provision of this title or a regulation adopted under this title is guilty of a
4 misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or
5 imprisonment not exceeding 90 days or both.

6 (b) In addition to the penalty under subsection (a) of this section, a person
7 who violates § 8-1301 of this subtitle:

8 (1) shall make full restitution of the benefit unlawfully received **AND**
9 **PAY A MONETARY PENALTY OF 15% OF THE BENEFIT UNLAWFULLY RECEIVED,**
10 including interest at a rate of 1.5% a month **ON THE TOTAL AMOUNT OF**
11 **RESTITUTION PLUS THE MONETARY PENALTY** from the date the Secretary notifies
12 the person of the amount to be recovered; and

13 (2) from 1 year from the date on which a determination is made that
14 the individual filed a claim involving a false statement, false representation, or failure
15 to disclose a material fact, the individual is disqualified from receiving benefits.

16 (c) (1) An employing unit or officer or agent of an employing unit who
17 violates § 8-1303 of this subtitle is guilty of a misdemeanor and on conviction is
18 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

19 (2) A person who violates § 8-5A-08(b) or (d) of this title is guilty of a
20 misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or
21 imprisonment not exceeding 1 year or both.

22 (3) A person who violates § 8-1304 of this subtitle is guilty of a
23 misdemeanor for each day the violation continues and on conviction is subject to a fine
24 not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

25 (4) An employee of the Secretary or Board of Appeals who violates §
26 8-625 of this title is guilty of a misdemeanor and on conviction is subject to a fine not
27 exceeding \$1,000 or imprisonment not exceeding 1 year or both.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
29 benefit determinations establishing overpayments issued on or after October 1, 2013.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2013.