

Department of Legislative Services  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 985  
Finance

(Senator Hershey)

Economic Matters

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**Labor and Employment - Unemployment Insurance - Duties of Secretary and Penalties**

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This bill requires the Secretary of Labor, with regard to Title 8 of the Labor and Employment Article (the Maryland Unemployment Insurance Law), to (1) enter into specified memorandums of understanding (MOUs) to implement and enforce the law; (2) conduct specified mandatory program integrity activities; (3) annually report additional information to the Governor; and (4) perform a full review of suspicious or potentially improper claims. The bill also increases criminal penalties for unemployment insurance (UI) violations under the Maryland Unemployment Insurance Law.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues due to the bill's penalty provisions. The bill is not anticipated to materially affect general fund incarceration expenditures. The Maryland Department of Labor (MDL) can implement the bill with existing budgeted resources.

**Local Effect:** Potential minimal increase in local incarceration expenditures due to the bill's penalty provisions. The bill is not anticipated to materially affect local revenues.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary/Current Law:**

*Duties of the Secretary of Labor*

*Memorandums of Understanding:* Among other things, current law authorizes the Secretary of Labor to adopt any regulation necessary to carry out the Maryland

Unemployment Insurance Law. Under the bill, the Secretary of Labor is specifically required to enter into an MOU with any State agency as necessary to implement and enforce the law.

*Mandatory Program Integrity Activities:* To verify that an individual is eligible to receive UI benefits, the Secretary of Labor must conduct all mandatory program integrity activities identified by the U.S. Department of Labor, Employment and Training Administration and the Office of Inspector General.

*Annual Report:* Under current law, by January 1 of each year, the Secretary of Labor must submit a report to the Governor on the administration and operation of the Maryland Unemployment Insurance Law. Existing statute requires the report to contain specified information. The bill expands the required contents of the annual report to include the following:

- the general program integrity process used by MDL, including tools, resources, and databases, to the extent that sharing the information does not jeopardize program integrity measures;
- a description of efforts made to identify, prevent, and recover improper overpayments of benefits, fraudulent payments, and measures being taken to improve the efforts;
- the type and amount of improper payments detected retroactively;
- money recouped from improper overpayments; and
- an explanation for the nonrecovery of overpayments, including the application of any allowable recovery exceptions.

*Review of Suspicious or Potentially Improper Claims:* The bill also requires the Secretary of Labor to perform a full review of suspicious or potentially improper UI claims. In determining if a claim is suspicious or potentially improper, the Secretary of Labor must consider the factors used by the Integrity Data Hub or any other public or private interstate database designed to support the integrity of state UI programs and any additional factors as appropriate, including commonalities in physical addresses, mailing addresses, Internet protocol addresses, email addresses, multifactor authentication, or bank accounts.

#### *Criminal Penalties for Unemployment Insurance Violations*

Title 8, Subtitle 13 of the Labor and Employment Article (§§ 8-1301 through 8-1305) addresses prohibited acts under the Maryland Unemployment Insurance Law and establishes criminal penalties for violations. Section 8-1306 specifies that a prosecution for a violation of §§ 8-1301, 8-1302, or 8-1305(a) must be instituted within three years after

the date on which the offense was committed. (In general, the criminal statute of limitations for a misdemeanor is one year.)

*Section 8-1301 – Fraudulently Obtaining or Increasing a UI Benefit:* Under current law, a person, for that person or another, may not knowingly make a false statement or false representation or knowingly fail to disclose a material fact to receive or increase a benefit or other payment under Title 8 or a UI law of another state, the federal government, or a foreign government.

A violator is guilty of a misdemeanor and subject to imprisonment for up to 90 days and/or a \$1,000 maximum fine. The bill increases this penalty to imprisonment for up to one year and/or a fine of at least \$600 but not more than \$2,300.

In addition to this penalty, a violator is disqualified from future UI benefits and is required to pay restitution, as specified. The bill does not alter these provisions.

*Section 8-1302 – Miscellaneous Prohibited Acts for Employers:* Under current law, an employer, its officer or agent, or another person may not knowingly make a false statement or false representation or knowingly fail to disclose a material fact to prevent or reduce the payment of a benefit to an individual who is entitled to the benefit; avoid becoming or remaining subject to Title 8; or avoid or reduce any contribution or other payment that is required from an employer under Title 8. Current law also prohibits an employer, its officer or agent, or another person from willfully failing or refusing to make a contribution or other payment, submit a report that is required under Title 8, produce records that are required under Title 8, or allow those records to be copied or inspected.

A violator is guilty of a misdemeanor and subject to imprisonment for up to 90 days and/or a \$1,000 maximum fine. The bill increases this penalty to imprisonment for up to one year and/or a fine of at least \$600 but not more than \$2,300.

*Section 8-1303 – Deduction of Wages and Waiver of Rights:* Under current law, an employing unit, directly or indirectly, may not:

- accept, make, or require a deduction from a wage to pay a contribution that the employing unit is required to pay; or
- accept or require from an employee a waiver of a right to which the employee is entitled under Title 8.

An employing unit or officer or agent of an employing unit who violates this provision is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a \$1,000 maximum fine. The bill retains the existing incarceration penalty but increases the applicable fine to at least \$600 but not more than \$2,300.

*Section 8-5A-08 – Compensation for Representation:* Under current law, an agent may not charge or accept compensation for representing a claimant in a proceeding before a special examiner or the Board of Appeals except that a lawyer may charge and accept compensation in an amount not greater than that approved by the Board of Appeals. Additionally, a person may not solicit, for that person or another person, the business of appearing on behalf of a claimant in a proceeding before a special examiner or the Board of Appeals. A violator is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a \$1,000 maximum fine. The bill retains the existing incarceration penalty but increases the applicable fine to at least \$600 but not more than \$2,300.

*Section 8-1304 – Failure or Refusal to Obey Subpoena:* Under current law, a person may not, without just cause, fail or refuse to obey a subpoena issued under § 8-306(c) or § 8-5A-06(b) of the Labor and Employment Article if the person has the power to obey the subpoena. A violator is guilty of a misdemeanor for each day the violation continues. Violations are punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. The bill retains the existing incarceration penalty but increases the applicable fine to at least \$600 but not more than \$2,300.

*Section 8-625 – Employment Records:* An employee of the Secretary of Labor or the Board of Appeals who violates provisions under § 8-625 of the Labor and Employment Article pertaining to employment records is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a \$1,000 maximum fine. The bill retains the existing incarceration penalty but increases the applicable fine to at least \$600 but not more than \$2,300.

**State/Local Fiscal Effect:** MDL advises that the bill codifies many existing practices and procedures. MDL anticipates that the department can handle any new requirements under the bill with existing budgeted resources.

According to MDL, § 8-1301 addresses the most common type of UI fraud. According to the Judiciary, from fiscal 2019 through 2021, one violation of § 8-1301 was filed in the District Court and no charges were filed in the District Court under § 8-1302 or § 8-1303. The Judiciary also notes that there were no convictions in the District Court under these provisions during this time. Consequently, while the bill increases fines and incarceration penalties, the number of cases affected by the bill is anticipated to be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1454 (Delegate Arentz) - Rules and Executive Nominations.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Office of the Public Defender; Maryland State Commission on Criminal Sentencing Policy; Montgomery and Prince George's counties; Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2022  
fnu2/aad Third Reader - March 28, 2022  
Revised - Amendment(s) - March 28, 2022

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