

Chapter 103

(House Bill 354)

AN ACT concerning

Unemployment Insurance – Recovery of Benefits – Monetary Penalty for Fraud

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

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 8–404, 8–809, and 8–1305

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

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

Article – Labor and Employment

8–404.

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

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

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

- (i) a clearing account;
- (ii) an Unemployment Trust Fund Account; and
- (iii) a benefit account.

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

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

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

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

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

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

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

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

- (i) may be used to pay refunds under Subtitle 6, Part V of this title;
- (ii) shall be used to pay benefits; and

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

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

8-809.

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

- (1) the claimant was not unemployed;
- (2) the claimant received or retroactively was awarded wages; or
- (3) due to a redetermination of an original claim by the Secretary, the claimant is disqualified or otherwise ineligible for benefits.

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

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

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

[(2)] (3) interest of 1.5% per month on the amount OF ALL BENEFITS PAID TO THE CLAIMANT FOR EACH WEEK FOR WHICH THE FALSE STATEMENT OR REPRESENTATION WAS MADE OR FOR WHICH THE CLAIMANT FAILED TO DISCLOSE A MATERIAL FACT PLUS THE AMOUNT OF THE MONETARY PENALTY accruing from the date that the claimant is notified by the Secretary that the claimant was not entitled to benefits received.

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

- (1) the amount to be recovered;
- (2) the weeks for which benefits were paid; [and]

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

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

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

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

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

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

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

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

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

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

(2) a federal unemployment insurance benefit program.

8-1305.

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 9, 2013.