

HOUSE BILL 139

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

Introduced and read first time: January 18, 2017

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: February 28, 2017

CHAPTER _____

1 AN ACT concerning

2 **Unemployment Insurance – Employer Determinations – Process and Appeal**
3 **Rights**

4 FOR the purpose of specifying the process and timeframe for exercising certain appeal
5 rights related to employer determinations under the unemployment insurance law;
6 requiring the Lower Appeals Division to hear and decide appeals from review
7 determination decisions; authorizing an employer to file an appeal of a review
8 determination decision to the Lower Appeals Division and the Board of Appeals
9 under certain circumstances and within certain time periods; requiring the Secretary
10 of Labor, Licensing, and Regulation to be a party to a certain appeal; authorizing a
11 hearing examiner to take certain action regarding a review determination decision;
12 authorizing the Board to initiate a review of a certain decision under certain
13 circumstances; requiring the Secretary to make certain determinations; authorizing
14 the Board to remand certain findings of a hearing examiner on certain bases;
15 requiring the Secretary, under certain circumstances, to make a certain
16 determination; requiring that a certain notice advise employers of a certain right and
17 certain information; specifying the processes for the Secretary, Division, and Board
18 to undertake certain reviews and appeals determinations and make certain
19 decisions; authorizing the Secretary to adopt certain regulations; specifying the
20 circumstances under which certain determinations and decisions become final and
21 not subject to appeal; altering the time period within which requests for certain
22 review determinations must be submitted; making a technical change; making
23 certain clarifying and conforming changes; providing for the application of this Act;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



defining certain terms; altering a certain definition; and generally relating to employer determinations under the unemployment insurance law.

BY repealing and reenacting, without amendments,

Article – Labor and Employment

Section 8–101(a) and 8–638(f)

Annotated Code of Maryland

(2016 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 8–101(f), 8–503, 8–507, 8–508, 8–5A–10, 8–602, 8–617(f), 8–621, 8–629(f), and 8–638(e)

Annotated Code of Maryland

(2016 Replacement Volume)

BY adding to

Article – Labor and Employment

Section 8–101(j–1), (m–1), (q–1), (t–1), (u–1), (w–1), (w–2), and (x–1), 8–604, 8–605, 8–613(i), and 8–617(g)

Annotated Code of Maryland

(2016 Replacement Volume)

BY repealing

Article – Labor and Employment

Section 8–617(g)

Annotated Code of Maryland

(2016 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Labor and Employment

8–101.

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

(f) “Board of Appeals” means the Board of Appeals of the Department of Labor, Licensing, and Regulation **ESTABLISHED UNDER § 8–5A–01 OF THIS TITLE.**

(J–1) “CLAIMS EXAMINER” MEANS AN INDIVIDUAL APPOINTED BY THE SECRETARY WHO MAKES DETERMINATIONS OR REDETERMINATIONS OF CLAIMS UNDER SUBTITLE 8 OF THIS TITLE.

(M-1) "DETERMINATION" MEANS A DECISION MADE BY OR ON BEHALF OF THE SECRETARY UNDER THIS TITLE.

(Q-1) "HEARING EXAMINER" MEANS AN INDIVIDUAL APPOINTED UNDER § 8-502 OF THIS TITLE WHO IS AUTHORIZED TO CONDUCT HEARINGS AND ISSUE DECISIONS IN CASES APPEALED TO THE LOWER APPEALS DIVISION.

(T-1) "LAST KNOWN ADDRESS" INCLUDES A PHYSICAL ADDRESS OR AN ELECTRONIC ADDRESS.

(U-1) "MAILED OR OTHERWISE DELIVERED" MEANS TO CAUSE TO BE DELIVERED BY ELECTRONIC TRANSMISSION OR PHYSICAL MAILING.

(W-1) "REVIEW DETERMINATION" MEANS THE PROCESS BY WHICH THE DEPARTMENT CONDUCTS AN INTERNAL REVIEW OF A DETERMINATION MADE UNDER SUBTITLE 6 OF THIS TITLE, INDEPENDENT OF A DETERMINATION OR REDETERMINATION OF A CLAIM.

(W-2) "REVIEW DETERMINATION DECISION" MEANS THE SECRETARY'S FINAL DETERMINATION UNDER SUBTITLE 6 OF THIS TITLE FOR WHICH A RIGHT TO A REVIEW DETERMINATION IS AVAILABLE THAT:

(1) IS ISSUED IN ACCORDANCE WITH § 8-604 OF THIS TITLE; AND

(2) MAY BE APPEALED IN ACCORDANCE WITH § 8-605 OF THIS TITLE.

(X-1) "SEND" MEANS TO CAUSE TO BE DELIVERED BY ELECTRONIC TRANSMISSION OR PHYSICAL MAILING.

8-503.

The Lower Appeals Division shall hear and decide appeals from:

(1) the determinations of the claims examiners; AND

(2) REVIEW DETERMINATION DECISIONS.

8-507.

(a) In a proceeding before a hearing examiner, a claimant may be represented by a lawyer or another agent authorized by the claimant.

(b) A lawyer REPRESENTING A CLAIMANT may charge and accept compensation in an amount not greater than that approved by the chief hearing examiner.

(c) Except as provided in subsection (b) of this section, an agent may not charge or accept compensation for representing a claimant in a proceeding before a hearing examiner.

(d) In a proceeding before a hearing examiner, an employer may appear pro se or be represented by a lawyer or another agent authorized by the employer.

(e) 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 hearing examiner.

8–508.

(a) **(1)** An individual who files a claim for benefits or an employer entitled to notice of a determination or redetermination of the claim may file an appeal with the Lower Appeals Division within 15 days after notice of the determination or redetermination **OF A CLAIM** is mailed to the claimant or employer at the last known address of the claimant or employer or otherwise is delivered.

[(b)] (2) The Secretary, at the Secretary's discretion, may be a party to an appeal filed by a claimant or employing unit with the Lower Appeals Division **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

(B) (1) AN EMPLOYER MAY FILE AN APPEAL OF A REVIEW DETERMINATION DECISION WITH THE LOWER APPEALS DIVISION WITHIN 30 DAYS AFTER THE NOTICE OF THE REVIEW DETERMINATION DECISION IS SENT TO THE EMPLOYER AT THE LAST KNOWN ADDRESS OF THE EMPLOYER.

(2) THE SECRETARY SHALL BE A PARTY TO AN APPEAL FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(c) Unless an appeal filed under subsection (a) **OR SUBSECTION (B)** of this section is withdrawn or removed to the Board of Appeals, a hearing examiner shall:

(1) give the parties a reasonable opportunity for a fair hearing in accordance with the notice provisions in §§ 10–207 and 10–208 of the State Government Article, except that the notice is not subject to § 10–208(b)(4) and (7) of the State Government Article;

(2) make findings of fact and conclusions of law, based on a preponderance of evidence, in accordance with § 10–217 of the State Government Article; and

(3) on the basis of the findings of fact and conclusions of law, affirm, modify, or reverse a determination or redetermination **OF A CLAIM OR A REVIEW DETERMINATION DECISION.**

(d) The hearing examiner promptly shall give each party:

(1) notice of the decision of the hearing examiner in accordance with § 10–221 of the State Government Article; and

(2) a copy of the decision and the findings of fact and conclusions of law that support the decision.

(e) The decision of the hearing examiner is final after 10 days after notice of the decision has been mailed or otherwise delivered to the individual or employer that filed the appeal with the Lower Appeals Division, unless further review is initiated under § 8–5A–10 of this title.

8–5A–10.

(a) **(1) [A] IN A CASE INVOLVING A DETERMINATION OR A REDETERMINATION OF A CLAIM,** A party who wishes to file an appeal with the Board of Appeals shall do so within 15 days after notice of the decision of a hearing examiner was mailed to the party at the last known address of the party or otherwise was delivered to the party.

(2) IN A CASE INVOLVING A DETERMINATION UNDER SUBTITLE 6 OF THIS TITLE FOR WHICH A REVIEW DETERMINATION WAS ISSUED, AN EMPLOYER THAT WISHES TO FILE AN APPEAL WITH THE BOARD OF APPEALS SHALL DO SO WITHIN 30 DAYS AFTER NOTICE OF THE DECISION OF A HEARING EXAMINER WAS SENT TO THE EMPLOYER.

(b) After a hearing examiner makes a final decision under § 8–508 of this title:

(1) if the hearing examiner does not affirm the determination or redetermination of a claim **OR THE REVIEW DETERMINATION DECISION**, the Board of Appeals shall allow an appeal by either the Secretary, or a party entitled to notice of the decision, or both; and

(2) if the hearing examiner affirms the determination or redetermination of a claim **OR THE REVIEW DETERMINATION DECISION**, the Board of Appeals may allow an appeal by a party entitled to notice of the decision.

(c) **(1) Within the time limit for filing an appeal under subsection [(a)] (A)(1) of this section, on its own motion the Board of Appeals may initiate a review of the decision of a hearing examiner IN A CASE INVOLVING A DETERMINATION OR A REDETERMINATION OF A CLAIM.**

(2) WITHIN THE TIME LIMIT FOR FILING AN APPEAL UNDER SUBSECTION (A)(2) OF THIS SECTION, ON ITS OWN MOTION THE BOARD OF APPEALS

MAY INITIATE REVIEW OF THE DECISION OF A HEARING EXAMINER IN A CASE INVOLVING A REVIEW DETERMINATION DECISION.

(d) On review on its own motion or on appeal, the Board of Appeals may **REMAND**, affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of:

(1) evidence submitted to the hearing examiner; or

(2) evidence that the Board of Appeals may direct to be taken.

(e) A proceeding removed or appealed to the Board of Appeals shall be heard by a quorum.

8–602.

(a) On the Secretary's own initiative or on application of an employer, the Secretary shall, on the basis of facts that the Secretary finds, determine:

(1) whether the employer is an employing unit;

(2) which employment is covered; [and]

(3) the contribution rate to be assigned;

(4) BENEFITS CHARGED TO AN EMPLOYER; AND

(5) (I) THE STATUS OF THE EMPLOYER UNDER § 8–613 OF THIS SUBTITLE, INCLUDING WHETHER THE EMPLOYER IS A REORGANIZED EMPLOYER, A PREDECESSOR EMPLOYER, OR A SUCCESSOR EMPLOYER; AND

(II) WHETHER THE EMPLOYER HAS VIOLATED § 8–614 OF THIS SUBTITLE.

(b) (1) The Secretary shall [mail] **SEND** notice of the determination under subsection (a) of this section to the employer at its last known address or otherwise deliver notice to the employer.

(2) The notice shall:

(I) include a statement of the supporting facts found by the Secretary;

(II) ADVISE THE EMPLOYER OF THE EMPLOYER'S RIGHT TO REQUEST A REVIEW DETERMINATION AS PROVIDED UNDER § 8-604 OF THIS SUBTITLE; AND

(III) ADVISE THE EMPLOYER THAT THE DETERMINATION IS FINAL AND NOT SUBJECT TO APPEAL IF THE EMPLOYER DOES NOT REQUEST A REVIEW DETERMINATION IN ACCORDANCE WITH § 8-604 OF THIS SUBTITLE.

(c) (1) An employer may appeal a determination of the Secretary to the Board of Appeals within 15 days after the Secretary mailed or otherwise delivered the notice under subsection (b) of this section.

(2) The Board of Appeals shall allow the appeal.

(3) The Secretary shall be a party to the appeal.

(4) The Board of Appeals shall give the parties a reasonable opportunity for a fair hearing as provided under Subtitle 5A of this title.

(D) EXCEPT IN THE CASE OF FRAUD OR A PERIOD FOR WHICH A REPORT UNDER § 8-626 OF THIS SUBTITLE WAS NOT FILED, A DETERMINATION MADE UNDER SUBSECTION (A) OF THIS SECTION SHALL BE SENT TO THE EMPLOYER WITHIN 3 YEARS OF THE LAST DAY FOR THE PERIOD AT ISSUE IN THE DETERMINATION.

8-604.

(A) IN THIS SECTION, "EMPLOYER" INCLUDES ANY EMPLOYER, EMPLOYING UNIT, GOVERNMENTAL ENTITY, OR NOT FOR PROFIT ORGANIZATION ENTITLED TO NOTICE OF A DETERMINATION UNDER THIS SUBTITLE.

(B) (1) THIS SUBSECTION APPLIES TO ANY DETERMINATION UNDER THIS SUBTITLE FOR WHICH THE RIGHT TO REQUEST A REVIEW DETERMINATION IS AVAILABLE.

(2) AN EMPLOYER MAY REQUEST A REVIEW DETERMINATION WITHIN 30 DAYS AFTER THE DATE THE SECRETARY'S DETERMINATION WAS SENT TO THE EMPLOYER.

(3) THE REQUEST FOR A REVIEW DETERMINATION SHALL STATE THE REASONS THE EMPLOYER DISAGREES WITH THE SECRETARY'S DETERMINATION.

(4) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF AN EMPLOYER DOES NOT MAKE A TIMELY REQUEST FOR A REVIEW

1 DETERMINATION, THE PREVIOUSLY ISSUED DETERMINATION OF THE SECRETARY IS
2 FINAL AND NOT SUBJECT TO APPEAL.

3 (II) IF AN EMPLOYER MAKES A LATE REQUEST FOR A REVIEW
4 DETERMINATION, THE SECRETARY MAY, IN THE SECRETARY'S DISCRETION, ACCEPT
5 THE REQUEST FOR A REVIEW DETERMINATION AS IF THE REQUEST HAD BEEN MADE
6 TIMELY.

7 (C) (1) THE REVIEW DETERMINATION SHALL BE CONDUCTED IN
8 ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE SECRETARY.

9 (2) THE SECRETARY MAY ADOPT REGULATIONS ESTABLISHING
10 PROCEDURES FOR CONDUCTING A REVIEW DETERMINATION.

11 (D) (1) AFTER CONDUCTING A REVIEW DETERMINATION, THE
12 SECRETARY SHALL ISSUE A REVIEW DETERMINATION DECISION AND SEND IT TO THE
13 EMPLOYER.

14 (2) THE REVIEW DETERMINATION DECISION:

15 (I) SHALL INCLUDE A STATEMENT OF THE FACTS ON WHICH
16 THE DECISION IS BASED;

17 (II) MAY ACCEPT, RECONSIDER, OR AMEND THE SECRETARY'S
18 INITIAL DETERMINATION; AND

19 (III) MAY BE APPEALED TO THE LOWER APPEALS DIVISION IN
20 ACCORDANCE WITH § 8-605 OF THIS SUBTITLE.

21 (E) (1) IF THE SECRETARY HAS NOT ISSUED A REVIEW DETERMINATION
22 DECISION WITHIN 60 DAYS AFTER THE DATE THE REVIEW DETERMINATION REQUEST
23 WAS SENT, THE EMPLOYER MAY REQUEST, IN WRITING, THAT THE SECRETARY
24 ADOPT THE PREVIOUSLY ISSUED DETERMINATION AS A FINAL DETERMINATION,
25 WHICH MAY BE APPEALED TO THE LOWER APPEALS DIVISION IN ACCORDANCE WITH
26 § 8-605 OF THIS SUBTITLE.

27 (2) ON RECEIPT OF A REQUEST UNDER PARAGRAPH (1) OF THIS
28 SUBSECTION, THE SECRETARY SHALL ISSUE AND SEND TO THE EMPLOYER A
29 NOTICE:

30 (I) ADOPTING THE SECRETARY'S PREVIOUSLY ISSUED
31 DETERMINATION AS A REVIEW DETERMINATION DECISION; AND

(II) ADVISING THE EMPLOYER OF THE RIGHT TO FILE AN APPEAL TO THE LOWER APPEALS DIVISION IN ACCORDANCE WITH § 8-605 OF THIS SUBTITLE.

8-605.

(A) (1) AN EMPLOYER MAY APPEAL A REVIEW DETERMINATION DECISION ISSUED UNDER § 8-604 OF THIS SUBTITLE TO THE LOWER APPEALS DIVISION WITHIN 30 DAYS AFTER THE SECRETARY SENT THE REVIEW DETERMINATION DECISION TO THE EMPLOYER.

(2) AN APPEAL UNDER THIS SECTION SHALL IDENTIFY ALL FACTS AND ISSUES ON WHICH THE APPEAL IS BASED.

(3) THE LOWER APPEALS DIVISION SHALL ALLOW THE APPEAL.

(4) A HEARING EXAMINER SHALL PROVIDE THE PARTIES WITH A REASONABLE OPPORTUNITY FOR A FAIR HEARING IN ACCORDANCE WITH SUBTITLE 5 OF THIS TITLE.

(B) THE HEARING EXAMINER'S DECISION UNDER THIS SECTION AND SUBTITLE 5 OF THIS TITLE IS FINAL IF THE EMPLOYER OR THE SECRETARY DOES NOT FILE AN APPEAL WITH THE BOARD OF APPEALS IN ACCORDANCE WITH SUBTITLE 5A OF THIS TITLE WITHIN 30 DAYS AFTER THE DECISION IS SENT TO THE EMPLOYER.

8-613.

(I) THE SECRETARY'S DETERMINATION UNDER THIS SECTION IS FINAL AND NOT SUBJECT TO APPEAL IF THE EMPLOYING UNIT DOES NOT REQUEST A REVIEW DETERMINATION IN ACCORDANCE WITH § 8-604 OF THIS SUBTITLE WITHIN 30 DAYS AFTER THE NOTICE IS SENT TO THE EMPLOYING UNIT.

8-617.

(f) [(1)] In accordance with regulations adopted to carry out this title, the Secretary shall notify each not for profit organization of any determination that the Secretary makes about:

[(i)] (1) its status as an employing unit; or

[(ii)] (2) the effective date of an election or termination of election.

1 [(g) (1) A not for profit organization may appeal a determination of the
2 Secretary to the Board of Appeals within 15 days after the Secretary mails notice of the
3 determination to the not for profit organization at the last known address of the not for
4 profit organization or otherwise delivers the notice.

5 (2) The Secretary shall be a party to the appeal.]

6 (G) A DETERMINATION BY THE SECRETARY UNDER SUBSECTION (F) OF THIS
7 SECTION IS FINAL AND NOT SUBJECT TO APPEAL UNLESS, WITHIN 30 DAYS AFTER
8 THE DETERMINATION IS SENT TO THE EMPLOYER, A NOT FOR PROFIT
9 ORGANIZATION REQUESTS A REVIEW DETERMINATION IN ACCORDANCE WITH §
10 8-604 OF THIS SUBTITLE.

11 8-621.

12 [(a) (1)] A bill from the Secretary under § 8-620 of this subtitle is final AND NOT
13 SUBJECT TO APPEAL for a not for profit organization or governmental entity unless it
14 [submits an application for] REQUESTS A review [by the Secretary] DETERMINATION IN
15 ACCORDANCE WITH § 8-604 OF THIS SUBTITLE within [15] 30 days after [the Secretary
16 mailed] the bill WAS SENT to the [last known address of the] not for profit organization or
17 governmental entity [or otherwise delivered the bill].

18 [(2) An application under this subsection shall set forth the grounds for
19 review.

20 (b) (1) On receipt of an application for review, the Secretary promptly shall
21 review and reconsider the amount due in the bill and issue a review determination.

22 (2) The Secretary shall mail a copy of the review determination to a not for
23 profit organization or governmental entity to its last known address or otherwise deliver
24 the copy.

25 (c) A review determination of a bill is final unless a not for profit organization or
26 governmental entity submits an appeal to the Board of Appeals within 15 days after the
27 Secretary mailed the review determination to the last known address of the not for profit
28 organization or governmental entity or otherwise delivered the review determination.

29 (d) Proceedings on appeal to the Board of Appeals from the amount of a bill or a
30 redetermination of the amount shall be in accordance with Subtitle 5A of this title.]

31 8-629.

32 (f) (1) An assessment under this section is final unless:

(i) within ~~[15]~~ **30** days after the [mailing of the] assessment **WAS SENT**, an employing unit [applies to the Board of Appeals for a hearing] **REQUESTS A REVIEW DETERMINATION UNDER § 8-604 OF THIS SUBTITLE**; or

(ii) on its own motion, the Board of Appeals [reduces] **GRANTS A HEARING TO CONSIDER WHETHER** the contribution or interest **SHOULD BE REDUCED**.

(2) After a hearing held under this subsection, the Board of Appeals shall:

(i) pass an order to affirm, modify, or set aside the assessment; and

(ii) promptly give an employing unit written notice of its decision.

(3) EXCEPT IN THE CASE OF A FRAUDULENT REPORT OR IN THE CASE OF A PERIOD FOR WHICH A REPORT UNDER § 8-626 OF THIS SUBTITLE WAS NOT FILED, A NOTICE UNDER THIS SECTION SHALL BE SENT TO THE EMPLOYER WITHIN 3 YEARS OF THE LAST DAY OF THE PERIOD AT ISSUE IN THE NOTICE.

8-638.

(e) (1) If a claim for an adjustment or refund is rejected, the Secretary shall [mail] **SEND** a written notice of rejection to the employing unit.

(2) [(i) Within 15 days after receiving a notice of rejection, the employing unit may petition the Appeals Board for a formal hearing] **THE SECRETARY'S DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS FINAL AND NOT SUBJECT TO APPEAL IF THE EMPLOYING UNIT DOES NOT REQUEST A REVIEW DETERMINATION IN ACCORDANCE WITH § 8-604 OF THIS SUBTITLE WITHIN 30 DAYS AFTER THE NOTICE IS SENT TO THE EMPLOYING UNIT.**

[(ii) The petition shall state the grounds on which the refund or adjustment is claimed.

(3) The Board of Appeals shall:

(i) grant a hearing requested under this subsection;

(ii) notify the employing unit of the time and place of the hearing;

(iii) after the hearing, pass an order that the Board of Appeals considers to be just and lawful; and

(iv) give a copy of the order to the employing unit.]

(f) This title does not:

(1) authorize an adjustment or refund of money that was due under the law in effect at the time that the money was paid; or

(2) prohibit a refund required under § 8–640 of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any determinations made by the Secretary under Title 8, Subtitle 6 of the Labor and Employment Article before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.