

LAWS OF DELAWARE
VOLUME 84
CHAPTER 212
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 73

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO CIVIL ACTIONS TO RECOVER OVERPAID UNEMPLOYMENT BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3325, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

(f) (1) The Department may do any of the following when an individual has an overpayment debt:

a. Write off, in whole or in part, an overpayment debt after a period of 3 years, when it has ascertained after investigation and after reasonable attempts at collection that the overpayment debt is wholly or partly uncollectible. The Department may prescribe the appropriate accounting methods by which the uncollected portion of the debt is written off its accounts instead of being carried indefinitely as an uncollected debt.

b. Collect an overpayment of benefits by bringing a civil action in a court of competent jurisdiction against the claimant.

1. Nonfraud Overpayments. No action shall be taken by the Department to collect a nonfraud overpayment of benefits from an individual after a period of 5 years from the end of the benefit year, as defined in § 3302 of this title, with respect to which such benefits were paid, unless during this 5-year period the Department has brought a civil action in a court of competent jurisdiction against the individual.

2. Fraud Overpayments. Notwithstanding § 8106 of Title 10, or any other law to the contrary, the Department may bring a civil action in a court of competent jurisdiction against a person for purposes of collecting a fraud overpayment of benefits at any time.

3. All Overpayments. Notwithstanding anything in this section, § 8106 of Title 10, or any other law to the contrary, the Department may collect at any time an overpayment of benefits through any of the following means:

a. An offset of future benefits under this section.

b. As provided in § 545 of Title 30.

c. As provided in § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402).

d. As provided in § 303(m) of the Social Security Act (42 U.S.C. § 503(m)).

Section 2. Amend § 3325, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

(h)(1) Effective March 15, 2020, the Department may waive the recovery of any overpayment of benefits received under this chapter by any individual for which the individual was not entitled, in accordance with such regulations as the Department prescribes, if the Department finds any of the following:

a. In the judgment of the Department, recovery would be against equity and good conscience.

b. The overpayment was the result of Department error.

(2) Repayment of an overpayment may be found by the Department to be against equity and good conscience if the individual, at the time of submitting an application for overpayment waiver, is a current recipient of a low-income based public assistance program designated by the Department.

(3) Fraud overpayments are not eligible for waiver under this section.

(4) The Department shall notify the overpaid individual in writing of the opportunity to file an application to request waiver of an overpayment. The individual shall have 30 days from the date of the notice to submit a completed application for waiver of any overpayment set forth in the notice.

(5) Following the grant or denial of a request for waiver of recovery of an overpayment, the Department shall promptly deliver to the overpaid individual, by mail to the individual's last known address or other delivery method, a

written determination setting forth the basis for grant or denial of the request and explaining the overpaid individual's appeal rights. The determination becomes final unless a written appeal is filed to the appeals tribunal within 15 days after the determination is mailed to the individual's last known address or otherwise delivered to the individual, which appeal shall be handled in the same manner as appeals of benefit determinations pursuant to § 3318(c) of this title. The individual and the Department shall be notified of the appeals tribunal's decision, together with the reasons therefor, which shall be final unless within 15 days from the date of mailing or other delivery method of the decision a further appeal is initiated to the Unemployment Insurance Appeal Board, which appeal shall be handled in the same manner as appeals of benefit determinations pursuant to §§ 3320, 3321 and 3323 of this title. The decision of the Unemployment Insurance Appeal Board shall be final and not subject to further review.

Section 3. Amend § 3319, Title 19 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 3319. Appointment, organization, disqualification and compensation of appeal tribunals.

To hear and decide disputed claims, protests under § 3368(e) of this title, disputed overpayments and overpayment waivers under § 3325 of this title, and hearings under § 3369 of this title, the Department shall appoint 1 or more impartial appeal tribunals consisting in each case of either a salaried examiner, to be known as a referee, or a body consisting of 3 members, 1 of whom shall be a referee who shall serve as chairperson, 1 of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter 2 members shall serve at the pleasure of the Department and be paid a fee of not more than \$10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Department in any case in which that person is an interested party. The Department may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairperson shall act alone in the absence or disqualification of any other member and that member's alternates. In no case shall the hearing proceed unless the chairperson of the appeal tribunal is present.

Section 4. Section 1 of this Act does not apply to overpayment debts that accrued 3 years or more prior to the date of enactment of this Act.

Approved September 14, 2023