



SPONSOR: Rep. Osienski & Rep. K. Williams & Sen. Townsend &  
Sen. Walsh  
Reps. Hilovsky, Michael Smith; Sen. Gay

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

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.

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

53           § 3319. Appointment, organization, disqualification and compensation of appeal tribunals.

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

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

#### SYNOPSIS

This House Substitute No. 1 for House Bill 73 provides a 5-year statute of limitations for the Department of Labor to bring civil actions to recover nonfraud overpayment debts and no period of limitations to recover fraud overpayment debts. This portion of the Substitute will apply to overpayment debts for which the statute of limitations has not yet run, which includes those that accrued less than 3 years prior to the enactment of this Act. This Substitute expressly codifies the current law that there is no deadline for the Department to collect overpayment debts by offset of future benefits, by state Department of Revenue offset or by federal Treasury offset of tax refunds, the last of which is mandated by federal law. Finally, this Substitute creates an overpayment waiver program, effective retroactively to the start of the COVID-19 pandemic, to give the Department authority to waive non-fraud overpayments of traditional unemployment benefits resulting from either Department error or claimants receiving certain low-income public assistance.