SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Delcollo, Ennis, Paradee; Reps. Brady, Longhurst, Matthews, K. Williams

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 128

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION.

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

Section 1. Amend § 3361, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3361. Special procedure to obtain judgment; notice and lien of judgment; judicial review.

(d)(1) Notwithstanding the provisions under § 4711 of Title 10, the Department may renew and extend the lien of a judgment for a term of 10 years by filing a renewal certificate under paragraph (d)(2) of this section in the office of the prothonotary of Superior Court, under the Department's seal and the hand of the Secretary, before the expiration of the 10 year term under § 4711 of Title 10.

(2) A renewal certificate under paragraph (d)(1) of this section must contain all of the following:

a. A statement that the employer remains indebted under this chapter in the amount stated in the renewal certificate.

b. The name and last known address of the employer liable for the amount stated in the renewal certificate.

c. The amount due.

d. A statement that the Department has complied with all provisions under this title in preparing the renewal certificate.

(3) The prothonotary of Superior Court shall immediately enter the filed renewal certificate upon the record of the docketed judgment.

(4) An entry upon the record of a docketed judgment under this subsection has the same force and effect in all respects as other entries of docketed judgments filed in the office of the prothonotary of Superior Court and the Department has all of the remedies and may take any of the proceedings for collection of the debt entered under this subsection which can be had or taken upon a judgment in an action of law upon debt or contract.

Section 2. Amend Chapter 33, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3368. Execution of judgments.

(a) In general.

(1) If an employer liable to pay any assessment, interest, or penalty under this title neglects or refuses to pay the amount after a judgment has been obtained under § 3361 of this title, or otherwise, the Department may execute on the judgment.

(2) If a person liable for an overpayment of benefits owed to the Department, including any interest or penalty imposed under this title, neglects or refuses to pay the amount after a judgment has been obtained under § 3325 of this title, or otherwise, the Department may execute on the judgment.

(b) Warrants for levy and sale of property. The Department may issue a warrant directed to the sheriff of any county of this State commanding the sheriff to levy on and sell the personal or real property of the employer or overpayment debtor for the payment of the amount of the judgment and the cost of executing the warrant. The sheriff shall return such warrant to the Department and pay to the Department the money collected by virtue thereof within 60 days after receipt of the warrant. A copy of the warrant must be filed with the prothonotary of Superior Court and noticed on the regular judgment docket. All sales of real and personal property under authority of this section must be made under the provisions of Title 10.

(c) Garnishment of bank accounts of employers and overpayment debtors. Notwithstanding §§ 3502 or 4913(b) of Title 10, the Department may issue a notice of garnishment directed to a bank, commanding the garnishee to set aside, account for, and pay over to the Department on account of the debt any property owed to or held for the employer debtor or overpayment debtor by the bank. A copy of the notice of garnishment or an abstract thereof must be filed with the prothonotary of Superior Court and the fact of the garnishment noticed on the regular judgment docket.

(d) Garnishment of wages, salaries, and other amounts due to employers and overpayment debtors. The Department may issue a notice of garnishment directed to a person owing to or holding for a judgment debtor any wages, salaries, money, credits and effects, contract rights, or securities. The notice of garnishment must command the garnishee to set aside, account for, and pay over to the Department on account of the judgment all property then in the garnishee's possession or which may become due to the judgment debtor by the garnishee, until the judgment and costs of execution are paid. A copy of the notice of garnishment or an abstract thereof must be filed with the prothonotary of Superior Court and the fact of the garnishment noticed on the regular judgment docket. The Department shall notify the garnishee in writing when the judgment and costs have been satisfied.

(e) Duties of garnishee.

(1) A person receiving a notice of garnishment under subsection (c) or (d) of this section shall respond to the Department within 20 days after service of the notice, not counting the date of service.

(2) A garnishee who fails to comply with a notice of garnishment may, after notice and assessment under this chapter, be liable for a penalty equal to the amount the garnishee was instructed to set aside, account for, and pay over to the Department.

(3) A penalty under paragraph (e)(2) of this section becomes final 30 days after the mailing of the notice of proposed assessment of the penalty, except for those amounts for which the garnishee has filed a timely written protest with the Department under subsection (f) of this section.

(f) Written Protests of Garnishees. Within 30 days after the date of mailing of a notice of proposed assessment of a penalty under subsection (e) of this section, the garnishee may file a written protest against the proposed assessment of penalty with the Department in which the garnishee must set forth the grounds on which the protest is based. If a protest is filed, the Director of the Division of Unemployment Insurance shall reconsider the proposed assessment of penalty and, if requested by the garnishee, shall grant the garnishee an oral hearing before an appeals tribunal under § 3319 of this title.

(g) Notwithstanding § 3502 of Title 10, property, legal or equitable, wages, salaries, deposits, or moneys in banks, savings institutions, or loan associations, or other property or income of an employer owing tax assessments or claimant owing an overpayment of benefits to the Department is not exempt from execution or attachment process issued on, or from collection of, a judgment obtained under § 3325 or § 3361 of this title.

§ 3369. Professional and occupational licenses; denial or suspension.

(a) Definitions. As used in this section:

(1) "Debt" means any amount owed for overpayment of benefits, including any interest and penalties, and for unemployment compensation tax assessments, including any interest and penalties, payable under this title that exceeds, in aggregate, $1,000 and that has been reduced to a judgment under § 3325 or § 3361 of this title.

(2) "Debtor" means a person liable for a debt.

(3) "Director of the Division of Professional Regulation" means the Director of the Division of Professional Regulation of the Department of State, or the designee of the Director of the Division of Professional Regulation.

(4) "Director of Unemployment Insurance" means the Director of the Division of Unemployment Insurance of the Department of Labor, or the designee of the Director of Unemployment Insurance.

(5) "License" means a license, permit, certificate, approval, registration, or other similar form of permission or authorization to practice or engage in any profession, occupation, calling, or business issued or renewed by any

commission, board, or agency under the authority of the Division of Professional Regulation of the Department of State under § 8735 of Title 29.

(b) Cooperative agreements for tax assessment enforcement and for the collection of overpayments of benefits.

(1)a. To provide for enforcement of the unemployment compensation laws of this State by means of the denial or suspension of licenses issued to or applied for by debtors, the Director of the Division of Professional Regulation shall enter into a cooperative agreement with the Director of Unemployment Insurance to exchange information about any debtor who owes a debt to this State and who applies for or holds a license issued or renewed by any commission, board, or agency under the authority of the Division of Professional Regulation.

b. The specific information and the manner and frequency with which information is made available or otherwise exchanged between the Division of Unemployment Insurance and the Division of Professional Regulation must be determined by cooperative agreement, but must be made available or otherwise provided no less than 1 time each calendar year.

c. Each cooperative agreement must contain provisions for ensuring the confidentiality of the information to be exchanged under State and federal laws governing confidentiality of unemployment compensation information.

d. Each cooperative agreement must be revised as necessary to effectuate the provisions and purposes of this section.

(2) From the information provided by the Division of Professional Regulation under subsection (b) of this section, the Division of Unemployment Insurance, at such intervals as it determines, may identify applicants or licensees who are debtors, and undertake enforcement action under this section.

(c) Notice of intent to deny or suspend license. Subject to the provisions for notice and the right to a hearing under subsections (d) and (e) of this section, the Director of Unemployment Insurance shall give written notice to a debtor that a license issued or renewed by any commission, board, or agency under the authority of the Division of Professional Regulation may be denied, suspended, or will not be issued or renewed.

(d) Contents of notice. The notice provided under this subsection must be sent by registered or certified mail to the debtor's last address known to the Division of Unemployment Insurance and must inform the debtor of all of the following:

(1) The nature and amount of the debt.

(2) That the debt has been reduced to judgment in the Justice of the Peace Court under § 3325 of this title or in the Superior Court under § 3361 of this title and a copy of the judgment must have been provided to the debtor on or before the date of the notice.

(3) That under this section and § 8735 of Title 29, this information will be sent to the Delaware Division of Professional Regulation for the purposes of suspending or denying the issue or renewal of debtor's license unless, within 60 days of the notice, the debtor has done any of the following:

a. Paid the debt in full.

b. Entered into a written agreement with the Director of Unemployment Insurance for payment of the debt with such terms as the Director of Unemployment Insurance may require.

c. Requested a hearing under subsection (e) of this section.

(e) Request for hearing on proposed suspension or denial of license.

(1) If a debtor mails or delivers a written request for hearing to the Director of Unemployment Insurance within 20 days from the date of mailing the notice of intent to deny or suspend a license, an appeals tribunal under § 3319 of this title shall conduct a hearing for the limited purpose of determining if the debt exceeds $1,000 and if the debt was reduced to judgment under § 3325 or § 3361 of this title.

a. The appeals tribunal shall give written notice of the hearing to the debtor.

b. The debtor may present evidence, be represented by counsel of debtor's choice and at debtor's expense, and appear personally or by other representative.

c. The appeals tribunal may not receive evidence at the hearing regarding the appropriateness or validity of the final assessment of the unemployment compensation tax, including any interest and penalty, or the overpayment of benefits, including any interest and penalty, that has been reduced to judgment under § 3325 or § 3361 of this title.

d. The appeals tribunal shall issue a decision to the debtor after the hearing and the decision is final and not subject to further appeal.

(f) Denial or suspension of professional or occupation license.

(1) On certification by the Director of Unemployment Insurance to the Director of the Division of Professional Regulation of compliance with this section, the Director of the Division of Professional Regulation shall immediately suspend all licenses issued to the debtor by any commission, board, or agency; deny any applications to issue or renew any such license or licenses by the debtor; and give written notice of the suspension or denial to the debtor.

(2) The debtor remains ineligible for the issuance, renewal, or reinstatement of any license until the Director of Unemployment Insurance provides written certification to the Director of the Division of Professional Regulation that the grounds for denial or suspension of a license under this section no longer exist.

(3) The Director of Unemployment Insurance shall provide the written certification under paragraph (f)(2) of this section to the Director of the Division of Professional Regulation within 30 days from the time that the grounds for denial or suspension of a license under this section no longer exist.

(4) The Director Unemployment Insurance shall provide notice to the debtor when the written certification under paragraph (f)(2) of this section is provided to the Director of the Division of Professional Regulation.

(g) Regulations. The Director of Unemployment Insurance may promulgate regulations necessary to implement the provisions of this section.

(h) Remedies not exclusive. The remedies provided under this section are in addition to any other remedies for the enforcement of tax assessment obligations and the collection of overpayments of benefits.

Section 3. Amend § 8735, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8735. Division of Professional Regulation.

(*l*)(1) The provisions of §§ 516(g) and § 2216 of Title ~~13~~ 13, § 3368 of Title 19, and § 547 of Title 30 ~~shall~~ supersede any provisions of this section to the contrary and any provisions or procedures, by statute or regulation, of any commission, ~~board~~ board, or agency named in this section with respect to matters involving any applicant or licensee under § 516(g) or § 2216 of Title ~~13~~ 13, § 3368 of Title 19, and § 547 of Title 30.

(2) The ~~Upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Services pursuant to § 2216 of Title 13 or notice from the Director of the Division of Revenue pursuant to § 547 of Title 30 regarding a licensee or applicant, the~~ Director of the Division of Professional Regulation shall forthwith suspend, or deny to such licensee or applicant the issuance or renewal of, any license, permit, certificate, approval, ~~registration~~ registration, or other similar form of permission or authorization to practice or engage in any profession, ~~occupation~~ occupation, or business of any commission, ~~board~~ board, or agency named in this ~~section (but~~ section, but not including any license issued on behalf of a nonprofit applicant by the Board of Charitable Gaming ~~as set forth in~~ under Chapter 15 of Title ~~28)~~ 28, on receipt of notification regarding a licensee or applicant from any of the following:

a. The Family Court under § 516(g) of Title 13.

b. The Director of the Division of Child Support Services under § 2216 of Title 13.

c. The Director of the Division of Unemployment Insurance under § 3368 of Title 19.

d. The Director of the Division of Revenue under § 547 of Title 30.

SYNOPSIS

This Act expands the collection procedures available to the Division of Unemployment Insurance to more closely match the collection procedures currently available to the Division of Revenue. This Act will provide the Division of Unemployment Insurance with streamlined procedures to allow it to more quickly and easily execute on judgments for unpaid unemployment compensation tax assessments and overpayments of tax benefits paid to individuals to which they were not entitled. These procedures include obtaining warrants for the levy and sale of property; garnishments of wages, bank accounts, and other property; streamlined garnishment procedures; and denying or suspending professional licenses of judgment debtors. This Act also provides a streamlined process to renew the liens on judgments for an additional 10 years.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Walsh