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

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 128
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

To hear and decide disputed claims, protests under § 3368(e) 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 2. Amend § 3360, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3360. Assessments, penalties and interest as debt to Fund; reduction to judgment; other means of collection.

(a) The assessments, penalties and interest due from the employer under this chapter, from the time they become due, shall be a debt of the employer to the Unemployment Compensation Fund and may be reduced to judgment in accordance with §§ 3358 and 3361 of this title, except that the interest and penalty from the employer under this title after September 30, 1967, and the additional emergency assessment required under § 3391 of this title shall be a debt of the employer to the Special Administration Fund of the Department of Labor.

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(b) The Department shall collect assessments, penalties, and interest due from an employer under this chapter and the Department may establish the mode or time for the collection of any amount due under this chapter.

~~(b)~~ (c) In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due from any employer under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or state law.

Section 3. 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.

(a) As an additional or alternative remedy the Department may issue, under its seal and the hand of the Secretary of Labor of the State, to the prothonotary of the Superior Court in and for any county of this State a certificate that any employer is indebted under this chapter in an amount which ~~shall~~ must be stated in such certificate. Thereupon the prothonotary ~~to whom such certificate has been issued~~ shall immediately enter upon the record of docketed judgments the name of ~~such~~ the employer, the name of the Department, the amount of the debt ~~so~~ certified, a brief description of the employer's liability under this ~~chapter~~ chapter, and the date of making ~~such~~ the entries.

(1) ~~The~~ Except as provided under paragraph (a)(2) and subsection (d) of this section, the making of ~~such~~ entries ~~shall~~ under this section have the same force and effect in all respects as the entries of docketed ~~judgment~~ judgments in the office of ~~such~~ the prothonotary, and the Department ~~shall have~~ has all the remedies and may take all the proceedings for the collection of the debt which could be had or taken upon a judgment in an action of law upon debt or contract.

(2) Notwithstanding the provisions under §§ 4711 and 4713 of Title 10, the length of a judgment lien obtained under this section is as follows:

a. A judgment lien obtained under this section on or after [the effective date of the Act] automatically continues for 20 years from the date of the lien's entry.

b.1. A judgment lien obtained under predecessor provisions of this section by virtue of a certificate filed before [the effective date of the Act] and that is within the initial 10 year term as provided under § 4711 of Title 10, continues for 20 years from the original date of the judgment lien's entry notwithstanding either of the following:

A. That when the certificate was filed, the predecessor provision may have provided for a period of less than 20 years.

B. The provisions under subsection (c) of this section.

2. The Department shall provide notice to the judgment debtor, at the judgment debtor's last known address, of the length of the judgment lien under paragraph (a)(2)b.1. of this section.

(b) ~~Such~~ The debt, from the time of the docketing thereof, ~~shall be~~ is a lien on and ~~bind~~ binds the lands, ~~tenements~~ tenements, and hereditaments of the debtor. Promptly upon the entry of the debt as a judgment the prothonotary shall send by registered letter to the debtor, at the debtor's last known address within this State, notice of the entry of the judgment together with the ~~amount thereof.~~ amount.

(c) Within 10 days from the date of the notice, the debtor may file a petition in the Superior Court to review the legality or validity of the indebtedness, and upon the filing of the petition all proceedings on ~~such~~ the judgment shall be stayed until the final determination of the cause. ~~Such~~ The review ~~shall be~~ under this subsection is limited to the correct amount of ~~such~~ the indebtedness or the correct identity of the debtors.

(d)(1) Notwithstanding the provisions under §§ 4711 and 4713 of Title 10, the Department may renew and extend the lien of a judgment for a term of 20 years by filing a renewal certificate under paragraph (d)(2) of this section in the office of the prothonotary of Superior Court of any county of this State, under the Department's seal and the hand of the Secretary, before the expiration of the 20 year term under paragraph (a)(2) of this section.

(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 15 days or more before filing the renewal certificate, the Department provided the judgment debtor with notice of the renewal and extension of the lien of a judgment to the judgment debtor's last known address.

e. 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 docketed judgments.

(4) An entry upon the record of docketed judgments 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 4. 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. 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.

(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 for the payment of the amount of the judgment and the cost of executing the warrant. The sheriff shall return the 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. 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 by the bank on the date of service of the notice of garnishment. 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 from employers. The Department may issue a notice of garnishment directed to a person owing to or holding for an employer who is 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 and penalties for failure to garnish.

(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 knowingly fails to comply with a notice of garnishment after notice and assessment under subsection (d) of this section is liable for a penalty equal to the amount the garnishee was required to set aside, account for, and pay over to the Department.

(3) Within 30 days after the date of mailing of a notice of proposed assessment of a penalty under this subsection, 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, as designee of the Secretary of Labor, 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. The appeals tribunal decision is final and not subject to further appeal.

(4) 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 paragraph (e)(3) of this section.

(f) 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 to the Department is not exempt from execution or attachment process issued on, or from collection of, a judgment obtained under § 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 is to 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 paragraph (b)(1) 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 under §§ 3325 or 3361 of this title.

(3) That a copy of the judgment was provided to the debtor on or before the date of the notice.

(4) That under this section and § 8735 of Title 29, this information will be sent to the Division of Professional Regulation for the purposes of suspending or denying the issue or renewal of the 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 cannot 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 must reach a decision based on the evidence received at the appeals tribunal hearing and issue a decision to the debtor after the hearing. The appeals tribunal 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 5. 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.