

# HOUSE BILL 1590

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

Introduced and read first time: March 3, 2008

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Employer Misclassification of Employees as Independent Contractors**

3 FOR the purpose of prohibiting employers from misclassifying employees as  
4 independent contractors; requiring the Commissioner of Labor and Industry to  
5 initiate an investigation under certain circumstances to determine whether  
6 certain violations occurred; requiring the Commissioner to provide notice of  
7 potential violations of this Act to the Workers' Compensation Commission, the  
8 Office of Unemployment Insurance, and the Comptroller's Office under certain  
9 circumstances; providing for certain penalties and the award of certain damages  
10 and wages for certain violations of this Act; requiring the Commissioner to issue  
11 a citation under certain circumstances; requiring the Commissioner to grant an  
12 employer's request for a hearing to contest a citation; requiring the  
13 Commissioner to notify a public body of certain violations; requiring the public  
14 body, on notification, to withhold payment to an employer in a certain amount;  
15 requiring the Commissioner to file with the Secretary of State, the Department  
16 of Budget and Management, and the Department of General Services a list of  
17 certain violators of this Act; prohibiting certain employers from entering into a  
18 contract with a public body under certain circumstances; prohibiting an  
19 employer from discriminating against a person under certain circumstances;  
20 prohibiting a person from making certain complaints to the Commissioner;  
21 authorizing an individual who has not been properly classified as an employee  
22 to bring a civil action for damages against an employer; authorizing an  
23 employee organization on behalf of an individual or group of individuals to bring  
24 a civil action; requiring that a civil action be filed within a certain time period;  
25 requiring a court to award an individual or class of individuals certain costs and  
26 relief under certain circumstances; requiring the Commissioner to adopt  
27 regulations to carry out certain provisions of this Act; requiring an employer to  
28 retain certain records for a certain period of time; requiring cooperation under  
29 this Act by certain State agencies; establishing certain civil and administrative  
30 penalties under this Act and other laws under the jurisdiction of the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Commissioner of Labor and Industry; establishing certain unemployment  
2 insurance penalties for employers that misclassify employees in violation of this  
3 Act; creating a presumption in favor of covered employment under the State  
4 Workers' Compensation Law; prohibiting an employer from misclassifying an  
5 employee to avoid proper classification for the payment of premiums under the  
6 Workers' Compensation Commission; prohibiting an employer from  
7 misclassifying an employee as an independent contractor for purposes of the  
8 workers' compensation; prohibiting an employer from understating or  
9 concealing payroll for purposes of workers' compensation; authorizing the  
10 Workers' Compensation Commission to conduct investigations, to enter  
11 businesses, to examine business records, and to issue subpoenas for certain  
12 purposes; authorizing the Workers' Compensation Commission to order certain  
13 remedies if an employer misclassifies an employee; providing for debarment for  
14 certain employers who repeatedly violate the insurance coverage requirements  
15 of the Workers' Compensation Commission; making certain provisions of this  
16 Act severable; defining certain terms; prohibiting certain persons from  
17 conspiring with, aiding and abetting, assisting, advising, or facilitating another  
18 person with violating this Act; prohibiting a person from incorporating or  
19 assisting in the incorporation of certain entities for the purposes of facilitating  
20 or evading detection of a violation of this Act; and generally relating to the  
21 employer misclassification of employees as independent contractors.

22 BY repealing and reenacting, without amendments,  
23 Article – Labor and Employment  
24 Section 3–101  
25 Annotated Code of Maryland  
26 (1999 Replacement Volume and 2007 Supplement)

27 BY repealing and reenacting, with amendments,  
28 Article – Labor and Employment  
29 Section 3–102(a), 3–103, 3–104, 3–216, 3–427, 3–507, 8–201, 8–628, 9–202, and  
30 9–402(a)  
31 Annotated Code of Maryland  
32 (1999 Replacement Volume and 2007 Supplement)

33 BY adding to  
34 Article – Labor and Employment  
35 Section 3–216.1; 3–901 through 3–914 to be under the new subtitle “Subtitle 9.  
36 Misclassification of Employees”; and 8–201.1, 9–402.1, 9–402.2, 9–402.3,  
37 and 9–407.1  
38 Annotated Code of Maryland  
39 (1999 Replacement Volume and 2007 Supplement)

40 BY repealing and reenacting, with amendments,  
41 Article – State Finance and Procurement  
42 Section 17–221(e), 17–222, and 18–108  
43 Annotated Code of Maryland  
44 (2006 Replacement Volume and 2007 Supplement)

1 BY adding to  
2 Article – State Finance and Procurement  
3 Section 18–107.1  
4 Annotated Code of Maryland  
5 (2006 Replacement Volume and 2007 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Labor and Employment**

9 3–101.

- 10 (a) In this title the following words have the meanings indicated.
- 11 (b) “Commissioner” means the Commissioner of Labor and Industry.
- 12 (c) (1) “Employ” means to engage an individual to work.
- 13 (2) “Employ” includes:
- 14 (i) allowing an individual to work; and
- 15 (ii) instructing an individual to be present at a work site.

16 3–102.

- 17 (a) In addition to any duties set forth elsewhere, the Commissioner shall:
- 18 (1) enforce Subtitle 2 of this title;
- 19 (2) carry out Subtitle 3 of this title; [and]
- 20 (3) enforce Subtitle 4 of this title; **AND**
- 21 (4) **ENFORCE SUBTITLE 9 OF THIS TITLE.**

22 3–103.

- 23 (a) The Commissioner may conduct an investigation under Subtitle 2 of this  
24 title, on the Commissioner’s own initiative or may require a written complaint.
- 25 (b) The Commissioner may conduct an investigation under Subtitle 4 of this  
26 title, on the Commissioner’s own initiative or on receipt of a written complaint.

1 (c) The Commissioner may conduct an investigation to determine whether  
2 Subtitle 5 of this title has been violated on receipt of a written complaint of an  
3 employee.

4 (d) (1) The Commissioner may investigate whether § 3-701 of this title  
5 has been violated on receipt of a written complaint of an applicant for employment.

6 (2) The Commissioner may investigate whether § 3-702 of this title  
7 has been violated on receipt of a written complaint of an applicant for employment or  
8 an employee.

9 (E) **THE COMMISSIONER MAY INVESTIGATE WHETHER SUBTITLE 9 OF**  
10 **THIS TITLE HAS BEEN VIOLATED:**

11 (1) **ON THE COMMISSIONER'S OWN INITIATIVE;**

12 (2) **ON RECEIPT OF A WRITTEN COMPLAINT; OR**

13 (3) **ON REFERRAL FROM ANOTHER UNIT OF THE STATE**  
14 **GOVERNMENT.**

15 3-104.

16 The Commissioner may delegate any power or duty of the Commissioner under  
17 Subtitles 2, 4, [and] 5, **AND 9** of this title.

18 3-216.

19 (a) A person may not:

20 (1) interfere with or hinder the performance of any duty of the  
21 Commissioner under this subtitle; or

22 (2) knowingly give false information to the Commissioner.

23 (b) A person may not knowingly:

24 (1) employ a minor in violation of a provision of this subtitle; [or]

25 (2) allow a minor to be employed in violation of a provision of this  
26 subtitle; **OR**

27 (3) **MISCLASSIFY A MINOR AS AN INDEPENDENT CONTRACTOR IN**  
28 **VIOLATION OF § 3-903(A) OF THIS TITLE.**

1 (c) (1) A person who violates any provision of subsection (a) of this section  
2 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000  
3 or imprisonment not exceeding 90 days or both.

4 (2) A person who violates any provision of subsection (b) of this section  
5 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000  
6 or imprisonment not exceeding 1 year or both.

7 **3-216.1.**

8 **A PERSON WHO VIOLATES § 3-216(B)(1) OR (2) OF THIS SUBTITLE IN**  
9 **ADDITION TO § 3-216(B)(3) OF THIS SUBTITLE IS SUBJECT TO A CIVIL PENALTY**  
10 **NOT TO EXCEED \$3,000.**

11 3-427.

12 (a) If an employer pays an employee less than the wage required under this  
13 subtitle, the employee may bring an action against the employer to recover the  
14 difference between the wage paid to the employee and the wage required under this  
15 subtitle.

16 (b) On the written request of an employee who is entitled to bring an action  
17 under this section, the Commissioner may:

18 (1) take an assignment of the claim in trust for the employee;

19 (2) ask the Attorney General to bring an action in accordance with this  
20 section on behalf of the employee; and

21 (3) consolidate 2 or more claims against an employer.

22 (c) The agreement of an employee to work for less than the wage to which  
23 the employee is entitled under this subtitle is not a defense to an action under this  
24 section.

25 (d) If a court determines that an employee is entitled to recovery in an action  
26 under this section, the court may allow against the employer reasonable counsel fees  
27 and other costs.

28 **(E) IF THE COURT FINDS THAT THE EMPLOYER HAS VIOLATED THIS**  
29 **SUBTITLE AND § 3-903(A) OF THIS TITLE, THE COURT MAY:**

30 **(1) (I) AWARD UP TO 2 TIMES THE DAMAGES AWARDED UNDER**  
31 **SUBSECTION (A) OF THIS SECTION; OR**

1                   **(II) AWARD UP TO 3 TIMES THE DAMAGES AWARDED UNDER**  
2 **SUBSECTION (A) OF THIS SECTION IF THE VIOLATION IS FOUND TO BE WILLFUL;**  
3 **AND**

4                   **(2) ASSESS A CIVIL PENALTY NOT TO EXCEED \$3,000.**

5 3-507.

6           (a) Whenever the Commissioner determines that this subtitle has been  
7 violated, the Commissioner:

8                   (1) may try to resolve any issue involved in the violation informally by  
9 mediation;

10                   (2) with the written consent of the employee, may ask the Attorney  
11 General to bring an action in accordance with this section on behalf of the employee;  
12 and

13                   (3) may bring an action on behalf of an employee in the county where  
14 the violation allegedly occurred.

15           (b) [(1)] If, in an action under subsection (a) of this section, a court finds  
16 that an employer withheld the wage of an employee in violation of this subtitle and not  
17 as a result of a bona fide dispute, the court may award the employee an amount not  
18 exceeding 3 times the wage, and reasonable counsel fees and other costs.

19           **(C) IN ADDITION TO ANY AWARD UNDER SUBSECTION (B) OF THIS**  
20 **SECTION, IF THE COURT FINDS THAT THE EMPLOYER HAS VIOLATED THIS**  
21 **SUBTITLE AND § 3-903(A) OF THIS TITLE, THE COURT MAY:**

22                   **(1) (I) AWARD UP TO 2 TIMES THE WAGES AWARDED UNDER**  
23 **SUBSECTION (B) OF THIS SECTION; OR**

24                   **(II) AWARD UP TO 3 TIMES THE WAGES AWARDED UNDER**  
25 **SUBSECTION (B) OF THIS SECTION IF THE VIOLATION IS FOUND TO BE WILLFUL;**  
26 **AND**

27                   **(2) ASSESS A CIVIL PENALTY NOT TO EXCEED \$3,000.**

28                   [(2)] **(D)** If wages of an employee are recovered under [this section]  
29 **SUBSECTION (B) OR (C) OF THIS SECTION**, they shall be paid to the employee  
30 without cost to the employee.

31                   **SUBTITLE 9. MISCLASSIFICATION OF EMPLOYEES.**

32 **3-901.**

1           (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
2 INDICATED.

3           (B) “CONSTRUCTION SERVICES” INCLUDES THE FOLLOWING SERVICES  
4 PROVIDED IN CONNECTION WITH REAL PROPERTY:

5                   (1) BUILDING;

6                   (2) RECONSTRUCTING;

7                   (3) IMPROVING;

8                   (4) ENLARGING;

9                   (5) PAINTING AND DECORATING;

10                  (6) ALTERING;

11                  (7) MAINTAINING; AND

12                  (8) REPAIRING.

13           (C) “EMPLOYER” MEANS ANY PERSON WHO EMPLOYS AN INDIVIDUAL IN  
14 THE STATE.

15           (D) “PUBLIC BODY” MEANS:

16                   (1) THE STATE;

17                   (2) A UNIT OF THE STATE GOVERNMENT OR INSTRUMENTALITY  
18 OF THE STATE; OR

19                   (3) ANY POLITICAL SUBDIVISION, AGENCY, PERSON, OR ENTITY  
20 WITH RESPECT TO A CONTRACT FOR WHICH 50% OR MORE OF THE MONEY USED  
21 IS STATE MONEY.

22           (E) “WORK SITE” MEANS THE LOCATION WHERE WORK IS PERFORMED  
23 OR WHERE SERVICES ARE PROVIDED.

24 **3-902.**

25           THIS SUBTITLE APPLIES TO ANY PERSON THAT EMPLOYS AN INDIVIDUAL  
26 FOR REMUNERATION IN THE STATE.

1 **3-903.**

2 (A) AN EMPLOYER MAY NOT MISCLASSIFY AN EMPLOYEE AS AN  
3 INDEPENDENT CONTRACTOR.

4 (B) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, FOR  
5 PURPOSES OF ENFORCEMENT OF THIS SUBTITLE ONLY, WORK PERFORMED BY  
6 AN INDIVIDUAL FOR REMUNERATION PAID BY AN EMPLOYER SHALL CREATE AN  
7 EMPLOYER-EMPLOYEE RELATIONSHIP, UNLESS AN EMPLOYER DEMONSTRATES  
8 THAT:

9 (1) THE INDIVIDUAL WHO PERFORMS THE WORK IS FREE FROM  
10 CONTROL AND DIRECTION OVER ITS PERFORMANCE BOTH IN FACT AND UNDER  
11 THE CONTRACT;

12 (2) THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN AN  
13 INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT  
14 INVOLVED IN THE WORK; AND

15 (3) THE WORK IS:

16 (I) OUTSIDE OF THE USUAL COURSE OF BUSINESS OF THE  
17 PERSON FOR WHOM THE WORK IS PERFORMED; OR

18 (II) PERFORMED OUTSIDE OF ANY PLACE OF BUSINESS OF  
19 THE PERSON FOR WHOM THE WORK IS PERFORMED.

20 **3-904.**

21 (A) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO  
22 DETERMINE COMPLIANCE WITH THIS SUBTITLE AND REGULATIONS ADOPTED  
23 UNDER THIS SUBTITLE.

24 (B) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN  
25 INDIVIDUAL TO THE COMMISSIONER AS PART OF AN INVESTIGATION UNDER  
26 THIS SECTION IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE  
27 CONSENT OF THE INDIVIDUAL.

28 (C) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS TO:

29 (1) OBSERVE WORK BEING PERFORMED;

1           (2) INTERVIEW EMPLOYEES AND INDEPENDENT CONTRACTORS;  
2 AND

3           (3) REVIEW AND COPY RECORDS TO DETERMINE THE  
4 CORRECTNESS OF EACH INDIVIDUAL'S EMPLOYMENT CLASSIFICATION.

5           (D) THE COMMISSIONER SHALL REQUIRE EACH EMPLOYER TO:

6           (1) ATTEST TO THE TRUTHFULNESS OF EACH RECORD THAT IS  
7 COPIED IN ACCORDANCE WITH SUBSECTION (C)(3) OF THIS SECTION AND TO  
8 SIGN THE COPY; OR

9           (2) AT THE OPTION OF THE EMPLOYER, SUBMIT A WRITTEN  
10 STATEMENT ABOUT THE CLASSIFICATION OF EACH EMPLOYEE ON THE FORM  
11 PROVIDED BY THE COMMISSIONER.

12           (E) AN EMPLOYER THAT FAILS TO PRODUCE RECORDS UNDER  
13 SUBSECTION (C)(3) OF THIS SECTION WITHIN 5 BUSINESS DAYS OF THE  
14 COMMISSIONER'S REQUEST SHALL BE SUBJECT TO A FINE NOT EXCEEDING \$500  
15 PER DAY.

16           (F) (1) THE COMMISSIONER MAY ISSUE A SUBPOENA FOR TESTIMONY  
17 AND THE PRODUCTION OF RECORDS.

18           (2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED  
19 UNDER THIS SUBSECTION, THE COMMISSIONER MAY FILE A COMPLAINT IN THE  
20 CIRCUIT COURT FOR THE COUNTY WHERE THE PERSON RESIDES OR IS  
21 EMPLOYED REQUESTING AN ORDER DIRECTING COMPLIANCE WITH THE  
22 SUBPOENA.

23           (G) IF THE COMMISSIONER IS DENIED ACCESS TO A PLACE OF BUSINESS  
24 AFTER MAKING A PROPER REQUEST TO AN EMPLOYER, THE COMMISSIONER  
25 MAY APPLY TO THE DISTRICT COURT FOR AN ADMINISTRATIVE SEARCH  
26 WARRANT UNDER THIS SECTION.

27           (H) (1) EACH APPLICATION FOR AN ADMINISTRATIVE SEARCH  
28 WARRANT SHALL:

29           (I) STATE THE NATURE, PURPOSE, AND SCOPE OF THE  
30 INSPECTION; AND

31           (II) SHOW THAT THE APPLICANT:

1                   1.    IS AUTHORIZED BY LAW TO INSPECT THE  
2 PROPERTY TO WHICH ACCESS WAS DENIED;

3                   2.    REQUESTED ACCESS AT A REASONABLE TIME;

4                   3.    WAS DENIED ACCESS; AND

5                   4.    IS CONDUCTING THE INSPECTION FOR A PURPOSE  
6 RELATED TO INVESTIGATING THE MISCLASSIFICATION OF EMPLOYEES.

7                   (2)   AN APPLICATION MAY NOT BE SUBMITTED TO THE DISTRICT  
8 COURT UNLESS APPROVED BY THE ATTORNEY GENERAL.

9                   (3)   ON APPLICATION IN ACCORDANCE WITH THIS SECTION, THE  
10 DISTRICT COURT MAY ISSUE AN ADMINISTRATIVE SEARCH WARRANT.

11 **3-905.**

12                   (A)   IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
13 AN EMPLOYER HAS VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED  
14 UNDER THIS SUBTITLE, THE COMMISSIONER PROMPTLY SHALL ISSUE A  
15 CITATION TO THE EMPLOYER.

16                   (B)   EACH CITATION SHALL:

17                   (1)   DESCRIBE IN DETAIL THE NATURE OF THE ALLEGED  
18 VIOLATION; AND

19                   (2)   CITE THE PROVISION OF THIS SUBTITLE OR ANY REGULATION  
20 THAT THE EMPLOYER IS ALLEGED TO HAVE VIOLATED.

21                   (C)   WITHIN A REASONABLE TIME AFTER ISSUANCE OF A CITATION, THE  
22 COMMISSIONER SHALL SEND BY CERTIFIED MAIL TO THE EMPLOYER:

23                   (1)   NOTICE OF THE VIOLATION AND THE AMOUNT OF THE  
24 PENALTY; AND

25                   (2)   NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING.

26                   (D)   WITHIN 15 DAYS AFTER AN EMPLOYER RECEIVES A NOTICE UNDER  
27 SUBSECTION (C) OF THIS SECTION, THE EMPLOYER MAY SUBMIT A WRITTEN  
28 REQUEST FOR A HEARING ON THE CITATION AND PROPOSED PENALTY.

1           (E) IF A HEARING IS NOT REQUESTED WITHIN 15 DAYS, THE NOTICE OF  
2 THE VIOLATION, INCLUDING ANY PENALTIES, SHALL BECOME A FINAL ORDER  
3 OF THE COMMISSIONER.

4           (F) IF THE EMPLOYER REQUESTS A HEARING, THE COMMISSIONER MAY  
5 DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY TO  
6 HOLD A HEARING AND ISSUE PROPOSED FINDINGS OF FACT, CONCLUSIONS OF  
7 LAW, AND AN ORDER IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE  
8 STATE GOVERNMENT ARTICLE.

9           (G) A DECISION OF AN ADMINISTRATIVE LAW JUDGE ISSUED IN  
10 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT  
11 ARTICLE SHALL BECOME A FINAL ORDER OF THE COMMISSIONER UNLESS,  
12 WITHIN 15 DAYS OF THE ISSUANCE OF THE PROPOSED DECISION:

13           (1) THE COMMISSIONER ORDERS REVIEW OF THE PROPOSED  
14 DECISION; OR

15           (2) AN EMPLOYER SUBMITS TO THE COMMISSIONER A WRITTEN  
16 REQUEST FOR REVIEW OF THE PROCEEDING.

17           (H) AFTER REVIEW OF THE PROCEEDINGS UNDER SUBSECTION (G) OF  
18 THIS SECTION, WITH OR WITHOUT A HEARING, THE COMMISSIONER SHALL  
19 ISSUE AN ORDER THAT, ON THE BASIS OF FINDINGS OF FACT, AFFIRMS,  
20 MODIFIES, OR VACATES THE CITATION OR PROPOSED PENALTY OR DIRECTS  
21 OTHER APPROPRIATE RELIEF.

22           (I) AN ORDER OF THE COMMISSIONER UNDER SUBSECTION (H) OF THIS  
23 SECTION IS THE FINAL ADMINISTRATIVE ORDER.

24 **3-906.**

25           (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
26 AN EMPLOYER VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED UNDER  
27 THIS SUBTITLE, THE COMMISSIONER MAY ASSESS AND COLLECT A CIVIL  
28 PENALTY OF UP TO \$3,000 FOR EACH EMPLOYEE WHO IS MISCLASSIFIED.

29           (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE  
30 COMMISSIONER SHALL CONSIDER:

31           (1) THE GRAVITY OF THE VIOLATION; AND

32           (2) THE SIZE OF THE EMPLOYER'S BUSINESS.

1 (C) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
2 AN EMPLOYER WILLFULLY OR REPEATEDLY VIOLATED § 3-903 OF THIS  
3 SUBTITLE, THE COMMISSIONER MAY ASSESS AND COLLECT DOUBLE THE  
4 ADMINISTRATIVE PENALTIES SET FORTH IN SUBSECTION (A) OF THIS SECTION.

5 (D) ANY PENALTY ISSUED UNDER THIS SECTION AGAINST AN EMPLOYER  
6 SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS  
7 ENTITY THAT:

8 (1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS  
9 THE EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED; AND

10 (2) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR  
11 ACTIVITY.

12 (E) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
13 AN EMPLOYER VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED UNDER  
14 THIS SUBTITLE, THE COMMISSIONER MAY ORDER THE EMPLOYER TO PAY  
15 RESTITUTION TO EACH AFFECTED EMPLOYEE.

16 **3-907.**

17 (A) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER THIS  
18 SUBTITLE:

19 (1) AN INDIVIDUAL WHO HAS NOT BEEN PROPERLY CLASSIFIED  
20 AS AN EMPLOYEE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST THE  
21 EMPLOYER FOR MISCLASSIFICATION; OR

22 (2) AN EMPLOYEE ORGANIZATION MAY BRING A CIVIL ACTION ON  
23 BEHALF OF EITHER THE INDIVIDUAL OR A GROUP OF INDIVIDUALS AS A CLASS  
24 ACTION.

25 (B) AN ACTION FILED UNDER THIS SECTION SHALL BE FILED WITHIN 3  
26 YEARS OF THE ACT ON WHICH THE ACTION IS BASED.

27 (C) IF THE COURT DETERMINES THAT AN INDIVIDUAL OR CLASS OF  
28 INDIVIDUALS IS ENTITLED TO JUDGMENT IN AN ACTION AGAINST AN EMPLOYER  
29 FILED IN ACCORDANCE WITH THIS SECTION, THE COURT MAY AWARD EACH  
30 INDIVIDUAL AN AMOUNT NOT EXCEEDING 3 TIMES ANY ADDITIONAL WAGES  
31 DUE, REASONABLE COUNSEL FEES, OTHER COSTS OF THE ACTION, AND ANY  
32 OTHER APPROPRIATE RELIEF.

33 **3-908.**

1           **(A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT**  
2 **A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED AND ISSUES A CITATION,**  
3 **THE COMMISSIONER PROMPTLY SHALL NOTIFY THE OFFICE OF**  
4 **UNEMPLOYMENT INSURANCE, THE WORKERS' COMPENSATION COMMISSION,**  
5 **AND THE COMPTROLLER OF THE ISSUANCE OF THE CITATION.**

6           **(B) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE**  
7 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE**  
8 **DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE**  
9 **COMPTROLLER, AND OTHER STATE AGENCIES SHALL COOPERATE AND SHARE**  
10 **INFORMATION UNDER THIS SUBTITLE CONCERNING ANY SUSPECTED**  
11 **MISCLASSIFICATION OF EMPLOYEES.**

12 **3-909.**

13           **(A) AN EMPLOYER MAY NOT DISCRIMINATE IN ANY MANNER OR TAKE**  
14 **ADVERSE ACTION AGAINST AN INDIVIDUAL BECAUSE THE INDIVIDUAL:**

15                   **(1) FILES A COMPLAINT WITH THE EMPLOYER OR THE**  
16 **COMMISSIONER ALLEGING THAT THE EMPLOYER VIOLATED ANY PROVISION OF**  
17 **THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE;**

18                   **(2) BRINGS AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING**  
19 **INVOLVING A VIOLATION OF THIS SUBTITLE; OR**

20                   **(3) TESTIFIES IN AN ACTION AUTHORIZED UNDER THIS SUBTITLE**  
21 **OR A PROCEEDING INVOLVING A VIOLATION OF THIS SUBTITLE.**

22           **(B) AN INDIVIDUAL MAY NOT:**

23                   **(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE**  
24 **COMMISSIONER; OR**

25                   **(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE OR A**  
26 **PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE.**

27           **(C) (1) AN INDIVIDUAL WHO BELIEVES THAT AN EMPLOYER HAS**  
28 **DISCHARGED OR OTHERWISE DISCRIMINATED AGAINST THE INDIVIDUAL IN**  
29 **VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT TO THE**  
30 **COMMISSIONER A WRITTEN COMPLAINT THAT ALLEGES THE DISCRIMINATION**  
31 **AND THAT INCLUDES THE SIGNATURE OF THE INDIVIDUAL.**

1           (2) AN INDIVIDUAL SHALL FILE A COMPLAINT UNDER THIS  
2 SUBSECTION WITHIN **90** DAYS AFTER THE ALLEGED DISCRIMINATION OCCURS.

3           (D) (1) ON RECEIPT OF A COMPLAINT UNDER SUBSECTION (C) OF  
4 THIS SECTION, THE COMMISSIONER MAY INVESTIGATE.

5           (2) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES  
6 THAT AN EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS  
7 SECTION, THE COMMISSIONER SHALL FILE A COMPLAINT TO ENJOIN THE  
8 VIOLATION, TO REINSTATE THE EMPLOYEE TO THE FORMER POSITION WITH  
9 BACK PAY, OR FOR OTHER APPROPRIATE RELIEF IN THE CIRCUIT COURT FOR:

10                   (I) THE COUNTY IN WHICH THE ALLEGED VIOLATION  
11 OCCURRED;

12                   (II) THE COUNTY IN WHICH THE EMPLOYER HAS ITS  
13 PRINCIPAL OFFICE; OR

14                   (III) BALTIMORE CITY.

15           (3) WITHIN **120** DAYS AFTER THE COMMISSIONER RECEIVES A  
16 COMPLAINT, THE COMMISSIONER SHALL NOTIFY THE EMPLOYEE OF THE  
17 DETERMINATION UNDER THIS SUBSECTION.

18 **3-910.**

19           (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
20 A PROVISION OF THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS  
21 SUBTITLE MAY HAVE BEEN VIOLATED BY AN EMPLOYER ENGAGED IN WORK ON A  
22 CONTRACT WITH A PUBLIC BODY, THE COMMISSIONER IMMEDIATELY SHALL  
23 NOTIFY THE PUBLIC BODY.

24           (B) ON NOTIFICATION, THE PUBLIC BODY SHALL WITHHOLD FROM  
25 PAYMENT DUE THE EMPLOYER AN AMOUNT SUFFICIENT TO:

26                   (1) PAY EACH EMPLOYEE THE FULL AMOUNT OF WAGES DUE;

27                   (2) PAY ANY BENEFITS, TAXES, OR OTHER CONTRIBUTIONS THAT  
28 ARE REQUIRED BY LAW TO BE PAID ON BEHALF OF THE EMPLOYEE; AND

29                   (3) SATISFY A LIABILITY OF THE EMPLOYER FOR ANY CIVIL  
30 PENALTIES OWED.

1           (c) (1) THE COMMISSIONER SHALL FILE WITH THE SECRETARY OF  
2 STATE, THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE  
3 DEPARTMENT OF GENERAL SERVICES A LIST OF THE EMPLOYERS WHO  
4 REPEATEDLY VIOLATE THE PROVISIONS OF THIS SUBTITLE.

5           (2) THE COMMISSIONER'S FILING UNDER THIS SUBSECTION  
6 SHALL BE NOTICE TO A PUBLIC BODY AND ITS REPRESENTATIVES.

7           (3) AN EMPLOYER WHO APPEARS ON THE LIST SHALL BE  
8 PROHIBITED FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY  
9 DIRECTLY OR INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH ITS NAME  
10 APPEARED ON THE LIST.

11           (4) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN  
12 EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER THIS  
13 SUBSECTION.

14           (5) THE LIST MAINTAINED IN ACCORDANCE WITH THIS  
15 SUBSECTION IS A PUBLIC RECORD.

16           (6) A DEBARMENT UNDER THIS SECTION SHALL BE IN EFFECT  
17 AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT:

18                   (I) HAS ONE OR MORE OF THE SAME PRINCIPALS OR  
19 OFFICERS AS THE EMPLOYER AGAINST WHOM THE DEBARMENT WAS IMPOSED;  
20 AND

21                   (II) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR  
22 ACTIVITY.

23 **3-911.**

24           AN EMPLOYER SHALL KEEP, FOR AT LEAST 3 YEARS, IN OR ABOUT THE  
25 PLACE OF BUSINESS, RECORDS OF THE EMPLOYER CONTAINING THE  
26 FOLLOWING INFORMATION:

27                   (1) THE NAME, ADDRESS, AND OCCUPATION OF EACH EMPLOYEE  
28 OR INDEPENDENT CONTRACTOR;

29                   (2) THE RATE OF PAY OF EACH EMPLOYEE OR INDEPENDENT  
30 CONTRACTOR;

31                   (3) THE AMOUNT THAT IS PAID EACH PAY PERIOD TO EACH  
32 EMPLOYEE OR INDEPENDENT CONTRACTOR;

1           (4) THE HOURS THAT EACH EMPLOYEE OR INDEPENDENT  
2 CONTRACTOR WORKS EACH DAY AND EACH WORKWEEK; AND

3           (5) OTHER INFORMATION THAT THE COMMISSIONER REQUIRES,  
4 BY REGULATION, AS NECESSARY TO ENFORCE THIS SUBTITLE.

5 **3-912.**

6           (A) A PERSON MAY NOT INCORPORATE OR FORM, OR ASSIST IN THE  
7 INCORPORATION OR FORMATION OF, A CORPORATION, PARTNERSHIP, LIMITED  
8 LIABILITY CORPORATION, OR OTHER ENTITY, OR PAY OR COLLECT A FEE FOR  
9 USE OF A FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, LIMITED  
10 LIABILITY CORPORATION, OR OTHER ENTITY FOR THE PURPOSE OF  
11 FACILITATING, OR EVADING DETECTION OF, A VIOLATION OF THIS SUBTITLE.

12           (B) A PERSON MAY NOT CONSPIRE WITH, AID AND ABET, ASSIST,  
13 ADVISE, OR FACILITATE AN EMPLOYER IN A MANNER THAT RESULTS IN A  
14 VIOLATION OF THIS SUBTITLE.

15           (C) A PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A  
16 CIVIL PENALTY NOT EXCEEDING \$20,000.

17 **3-913.**

18           THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THE  
19 PROVISIONS OF THIS SUBTITLE.

20 **3-914.**

21           EACH CIVIL PENALTY UNDER THIS SUBTITLE SHALL BE PAID INTO THE  
22 GENERAL FUND OF THE STATE.

23 **8-201.**

24           (A) [Except as otherwise provided in this subtitle, employment]  
25 **EMPLOYMENT** is **PRESUMED TO BE** covered employment if:

26           (1) regardless of whether the employment is based on the common law  
27 relation of master and servant, the employment is performed:

28                   (i) for wages; or

29                   (ii) under a contract of hire that is written or oral or express or  
30 implied; and

1           (2)    the employment is performed in accordance with § 8-202 of this  
2 subtitle.

3           **(B) TO OVERCOME THE PRESUMPTION OF EMPLOYMENT, AN**  
4 **EMPLOYING UNIT SHALL ESTABLISH THAT THE PERSON PERFORMING SERVICES**  
5 **IS AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH § 8-205 OF THIS**  
6 **SUBTITLE OR IS SPECIFICALLY EXEMPTED UNDER THIS SUBTITLE.**

7 **8-201.1.**

8           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
9 **MEANINGS INDICATED.**

10           **(2) “KNOWINGLY” MEANS HAVING ACTUAL KNOWLEDGE OR**  
11 **ACTING WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THE**  
12 **PROHIBITION INVOLVED.**

13           **(3) “VIOLATE OR ATTEMPTS TO VIOLATE” INCLUDES INTENT TO**  
14 **EVADE, MISREPRESENTATION, OR WILLFUL NONDISCLOSURE.**

15           **(B) AN EMPLOYER MAY NOT MISCLASSIFY AN EMPLOYEE AS AN**  
16 **INDEPENDENT CONTRACTOR.**

17           **(C) IF THE SECRETARY DETERMINES THAT AN EMPLOYER HAS**  
18 **MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR, ANY AND ALL**  
19 **CONTRIBUTION OR REIMBURSEMENT PAYMENTS RESULTING FROM THE**  
20 **MISCLASSIFICATION THAT ARE DUE AND UNPAID SHALL ACCRUE INTEREST AT**  
21 **THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE FIRST DUE DATE**  
22 **FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE SECRETARY**  
23 **RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF CONTRIBUTIONS AND**  
24 **THE INTEREST.**

25           **(D) IF THE SECRETARY DETERMINES THAT AN EMPLOYING UNIT**  
26 **KNOWINGLY VIOLATED OR ATTEMPTED TO VIOLATE SUBSECTION (B) OF THIS**  
27 **SECTION, THE EMPLOYING UNIT SHALL BE SUBJECT TO A CIVIL PENALTY OF**  
28 **NOT MORE THAN \$3,000 PER EMPLOYEE.**

29           **(E) A PERSON THAT IS NOT AN EMPLOYING UNIT THAT VIOLATES OR**  
30 **ATTEMPTS TO VIOLATE THIS SECTION, OR THAT KNOWINGLY ADVISES AN**  
31 **EMPLOYING UNIT OR A PROSPECTIVE EMPLOYING UNIT IN A MANNER THAT**  
32 **RESULTS IN A VIOLATION OF THIS SECTION, SHALL BE SUBJECT TO A CIVIL**  
33 **PENALTY OF NOT MORE THAN \$5,000.**

1 8-628.

2 [A] **EXCEPT AS PROVIDED IN § 8-201.1 OF THIS TITLE**, A contribution or  
3 reimbursement payment that is due and unpaid shall accrue interest at the rate of  
4 1.5% per month or part of a month from the date on which it is due until the Secretary  
5 receives the contribution or payment in lieu of contributions and the interest.

6 9-202.

7 (a) [Except as otherwise provided, an] **AN** individual, including a minor, is  
8 **PRESUMED TO BE** a covered employee while in the service of an employer under an  
9 express or implied contract of apprenticeship or hire.

10 (b) A minor may be a covered employee under this section even if the minor  
11 is employed unlawfully.

12 (c) **TO OVERCOME THE PRESUMPTION OF COVERED EMPLOYMENT, AN**  
13 **EMPLOYER SHALL ESTABLISH THAT THE INDIVIDUAL PERFORMING SERVICES IS**  
14 **AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH THE COMMON LAW OR IS**  
15 **SPECIFICALLY EXEMPTED FROM COVERED EMPLOYMENT UNDER THIS**  
16 **SUBTITLE.**

17 9-402.

18 (a) Subject to subsections (b) through (f) of this section, each employer shall  
19 secure compensation for **ALL** covered employees of the employer by:

20 (1) maintaining insurance with the Injured Workers' Insurance Fund;

21 (2) maintaining insurance with an authorized insurer;

22 (3) participating in a governmental self-insurance group that meets  
23 the requirements of § 9-404 of this subtitle;

24 (4) participating in a self-insurance group of private employers that  
25 meets the requirements of Title 25, Subtitle 3 of the Insurance Article;

26 (5) maintaining self-insurance for an individual employer in  
27 accordance with § 9-405 of this subtitle; or

28 (6) having a county board of education or private noncollegiate  
29 institution secure compensation under § 8-402(c) or § 7-114(d) of the Education  
30 Article.

31 **9-402.1.**

1           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
2 MEANINGS INDICATED.

3                   (2) “KNOWINGLY” MEANS HAVING ACTUAL KNOWLEDGE OR  
4 ACTING WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THE  
5 PROHIBITION INVOLVED.

6                   (3) “VIOLATE OR ATTEMPTS TO VIOLATE” INCLUDES INTENT TO  
7 EVADE, MISREPRESENTATION, OR WILLFUL NONDISCLOSURE.

8           (B) AN EMPLOYER MAY NOT:

9                   (1) MATERIALLY UNDERSTATE OR CONCEAL PAYROLL;

10                   (2) MATERIALLY MISREPRESENT OR CONCEAL EMPLOYEE DUTIES  
11 TO AVOID PROPER CLASSIFICATION FOR PREMIUMS; OR

12                   (3) MISCLASSIFY AN EMPLOYEE AS AN INDEPENDENT  
13 CONTRACTOR.

14           (C) IF THE COMMISSION DETERMINES THAT AN EMPLOYER  
15 MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR OR  
16 UNDERSTATED PAYROLL, THE COMMISSION SHALL:

17                   (1) ORDER THE EMPLOYER TO SECURE COMPENSATION FOR THE  
18 COVERED EMPLOYEE, IF APPLICABLE;

19                   (2) IN CONFORMANCE WITH § 9-310 OF THIS TITLE, ASSESS A  
20 CIVIL PENALTY OF NOT MORE THAN \$5,000;

21                   (3) ON FINDING THAT A COVERED EMPLOYEE WAS MISCLASSIFIED  
22 AS AN INDEPENDENT CONTRACTOR, NOTIFY THE OFFICE OF UNEMPLOYMENT  
23 INSURANCE AND THE COMMISSIONER OF LABOR AND INDUSTRY, THE INSURER,  
24 IF ANY, AND THE COMPTROLLER; AND

25                   (4) IF APPLICABLE, ORDER THE EMPLOYER TO PAY THE FULL  
26 AMOUNT OF PREMIUMS DUE TO THE INSURER PLUS SIMPLE INTEREST.

27           (D) IF THE COMMISSION DETERMINES THAT AN EMPLOYER KNOWINGLY  
28 VIOLATED OR ATTEMPTED TO VIOLATE SUBSECTION (B) OF THIS SECTION, THE  
29 COMMISSION SHALL:

30                   (1) ORDER THE EMPLOYER TO SECURE COMPENSATION FOR THE  
31 COVERED EMPLOYEE, IF APPLICABLE;

1           (2) IN CONFORMANCE WITH § 9-310 OF THIS TITLE, ASSESS A  
2 CIVIL PENALTY OF NOT MORE THAN \$10,000;

3           (3) ON FINDING THAT A COVERED EMPLOYEE WAS MISCLASSIFIED  
4 AS AN INDEPENDENT CONTRACTOR, NOTIFY THE OFFICE OF UNEMPLOYMENT  
5 INSURANCE AND THE COMMISSIONER OF LABOR AND INDUSTRY, THE INSURER,  
6 IF ANY, AND THE COMPTROLLER; AND

7           (4) IF APPLICABLE, ORDER THE EMPLOYER TO PAY THE FULL  
8 AMOUNT OF PREMIUMS DUE TO THE INSURER PLUS SIMPLE INTEREST.

9 **9-402.2.**

10          (A) IN ADDITION TO THE ACTIONS SET FORTH IN § 9-402.1(C) AND (D)  
11 OF THIS SUBTITLE, TO ENFORCE COMPLIANCE, THE COMMISSION MAY:

12           (1) ASSESS INTEREST ON ANY UNPAID CIVIL PENALTY;

13           (2) IN ADDITION TO ANY OTHER PENALTIES PROVIDED IN THIS  
14 TITLE, ASSESS AGAINST THE EMPLOYER A PENALTY OF \$5,000 FOR EACH  
15 EMPLOYEE OF THAT EMPLOYER WHO IS DETERMINED BY THE COMMISSION TO  
16 BE MISCLASSIFIED AS AN INDEPENDENT CONTRACTOR;

17           (3) BRING AN ACTION IN CIRCUIT COURT TO RECOVER PENALTIES  
18 ASSESSED UNDER THIS TITLE, INCLUDING ANY INTEREST, AND TO ENFORCE ANY  
19 ORDER OF THE COMMISSION; AND

20           (4) NOTIFY THE EMPLOYER BY CERTIFIED MAIL, RETURN  
21 RECEIPT REQUESTED, THAT THE LICENSE OR PERMIT OF THE EMPLOYER TO DO  
22 BUSINESS IN THE STATE MAY BE SUSPENDED IF THE EMPLOYER FAILS TO  
23 DEMONSTRATE COMPLIANCE WITH ANY ORDER ISSUED UNDER § 9-402.1(C) OR  
24 (D) OF THIS SUBTITLE.

25          (B) IN ANY ACTION BROUGHT BY THE COMMISSION UNDER SUBSECTION  
26 (A)(3) OF THIS SECTION IN WHICH THE COMMISSION PREVAILS, THE CIRCUIT  
27 COURT SHALL AWARD COSTS, INCLUDING THE REASONABLE COSTS OF  
28 INVESTIGATION AND REASONABLE ATTORNEY'S FEES.

29          (C) IF THE EMPLOYER FAILS TO DEMONSTRATE COMPLIANCE WITH THE  
30 COMMISSION'S ORDER WITHIN 30 DAYS OF THE DATE THAT THE NOTICE ISSUED  
31 UNDER SUBSECTION (A)(4) OF THIS SECTION IS RECEIVED BY THE EMPLOYER,  
32 THE COMMISSION SHALL SEND A COPY OF THE NOTICE TO EACH STATE,  
33 COUNTY, OR MUNICIPAL UNIT THAT HAS ISSUED A LICENSE OR PERMIT TO THE

1 EMPLOYER FOR AN ACTIVITY FOR WHICH WORKERS' COMPENSATION COVERAGE  
2 IS REQUIRED BY LAW.

3 (D) (1) WITHIN 15 DAYS AFTER RECEIPT OF THE NOTICE, THE  
4 LICENSING UNIT SHALL PROVIDE THE EMPLOYER WITH THE NOTICE AND AN  
5 OPPORTUNITY FOR A HEARING AS OTHERWISE MAY BE REQUIRED BY LAW.

6 (2) IF A LAW REQUIRES THE LICENSING UNIT TO HOLD A  
7 HEARING, THE LICENSING UNIT SHALL SEND WRITTEN NOTICE OF THE HEARING  
8 TO THE COMMISSION.

9 (E) ANY CIVIL PENALTY OR INTEREST ASSESSED OR RECOVERED  
10 UNDER THIS TITLE SHALL BE PAID TO THE UNINSURED EMPLOYERS' FUND.

11 **9-402.3.**

12 (A) IN THIS SECTION, "PUBLIC BODY" HAS THE MEANING STATED IN §  
13 **3-901** OF THIS ARTICLE.

14 (B) THE COMMISSION SHALL FILE WITH THE SECRETARY OF STATE,  
15 THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE DEPARTMENT OF  
16 GENERAL SERVICES A LIST OF THE EMPLOYERS THAT REPEATEDLY VIOLATE  
17 THE PROVISIONS OF THIS SUBTITLE.

18 (C) THE COMMISSION'S FILING UNDER THIS SUBSECTION SHALL BE  
19 NOTICE TO A PUBLIC BODY AND ITS REPRESENTATIVES.

20 (D) AN EMPLOYER THAT APPEARS ON THE LIST SHALL BE PROHIBITED  
21 FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY DIRECTLY OR  
22 INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE EMPLOYER'S NAME  
23 FIRST APPEARED ON THE LIST.

24 (E) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN EMPLOYER  
25 PROHIBITED FROM ENTERING INTO A CONTRACT UNDER THIS SUBSECTION.

26 (F) THE LIST MAINTAINED IN ACCORDANCE WITH THIS SUBSECTION IS  
27 A PUBLIC RECORD.

28 (G) A DEBARMENT UNDER THIS SECTION SHALL BE IN EFFECT AGAINST  
29 ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT:

30 (1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS  
31 THE EMPLOYER AGAINST WHOM THE DEBARMENT WAS IMPOSED; AND

1           (2) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR  
2 ACTIVITY.

3 **9-407.1.**

4           (A) THE COMMISSION SHALL ENFORCE THE WORKERS' COMPENSATION  
5 COVERAGE REQUIREMENTS, INCLUDING THE REQUIREMENT THAT THE  
6 EMPLOYER:

7           (1) SECURE COMPENSATION FOR ALL COVERED EMPLOYEES;

8           (2) PROVIDE THE INSURER INFORMATION NECESSARY TO  
9 DETERMINE PAYROLL AND PROPER CLASSIFICATION; AND

10           (3) MAY NOT MISCLASSIFY A COVERED EMPLOYEE AS AN  
11 INDEPENDENT CONTRACTOR.

12           (B) IN ADDITION TO ANY OTHER POWERS SET FORTH IN THIS TITLE, THE  
13 COMMISSION HAS THE POWER TO:

14           (1) CONDUCT INVESTIGATIONS FOR THE PURPOSE OF ENSURING  
15 EMPLOYER COMPLIANCE WITH THE WORKERS' COMPENSATION COVERAGE  
16 REQUIREMENTS;

17           (2) ENTER AND INSPECT ANY PLACE OF BUSINESS AT ANY  
18 REASONABLE TIME FOR THE PURPOSE OF INVESTIGATING EMPLOYER  
19 COMPLIANCE;

20           (3) EXAMINE AND COPY BUSINESS RECORDS;

21           (4) ADMINISTER OATHS AND AFFIRMATIONS AND CERTIFY  
22 OFFICIAL ACTS IN ACCORDANCE WITH § 9-309 OF THIS TITLE;

23           (5) ISSUE AND SERVE SUBPOENAS FOR ATTENDANCE OF  
24 WITNESSES OR PRODUCTION OF BUSINESS RECORDS, BOOKS, PAPERS,  
25 CORRESPONDENCE, MEMORANDA, AND OTHER RECORDS IN ACCORDANCE WITH  
26 § 9-311 OF THIS TITLE;

27           (6) ISSUE PENALTY ASSESSMENT ORDERS AND ANY OTHER  
28 ORDERS NECESSARY FOR THE ADMINISTRATION OF THIS SECTION;

29           (7) LEVY AND PURSUE ACTIONS TO RECOVER PENALTIES; AND

30           (8) SEEK INJUNCTIONS AND OTHER APPROPRIATE RELIEF.

1           **(C) THE COMMISSION SHALL ADOPT REGULATIONS TO ADMINISTER**  
2 **THIS SUBTITLE.**

3                           **Article – State Finance and Procurement**

4 17–221.

5           (e) (1) On notification **OF A POSSIBLE VIOLATION UNDER THIS**  
6 **SECTION OR OF § 3–903 OF THE LABOR AND EMPLOYMENT ARTICLE**, the public  
7 body shall withhold from payment due the contractor or subcontractor an amount  
8 sufficient to:

9                           (i) pay each employee of the contractor or subcontractor the full  
10 amount of wages due under this subtitle **OR UNDER § 3–903(A) OF THE LABOR AND**  
11 **EMPLOYMENT ARTICLE**; and

12                           (ii) satisfy a liability of a contractor for liquidated damages as  
13 provided in § 17–222(a) of this subtitle, pending a final determination.

14           (2) If a subcontractor is responsible for a violation of this subtitle, the  
15 contractor:

16                           (i) may withhold from payment to the subcontractor an amount  
17 equal to the amount withheld from the contractor under paragraph (1) of this  
18 subsection; or

19                           (ii) if payment has been made to the subcontractor, may sue to  
20 recover that amount.

21 17–222.

22           (a) A contractor under a public work contract is liable to the public body for  
23 liquidated damages of \$20 for each laborer or other employee for each day for which:

24                           (1) the laborer is paid less than the prevailing wage rate of a mechanic  
25 while performing a task required to be performed by a mechanic or mechanic’s  
26 apprentice; or

27                           (2) the employee is paid less than the prevailing wage rate.

28           **(B) IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (A) OF**  
29 **THIS SECTION, A CONTRACTOR WHO VIOLATES § 17–214 OF THIS SUBTITLE AND**  
30 **§ 3–903(A) OF THE LABOR AND EMPLOYMENT ARTICLE SHALL BE LIABLE FOR**  
31 **LIQUIDATED DAMAGES IN THE AMOUNT OF:**

1           (1)    **TWO TIMES THE DAMAGES FOR EACH VIOLATION UNDER THIS**  
2 **TITLE; AND**

3           (2)    **THREE TIMES THE DAMAGES FOR EACH VIOLATION OF THIS**  
4 **TITLE IF THE VIOLATION IS FOUND TO BE WILLFUL.**

5           **[(b)] (C)**   (1)    If a contractor or subcontractor pays an employee less than  
6 the amount the employee is entitled to receive for the work performed, the contractor  
7 shall make restitution to the employee.

8           (2)    The contractor and the subcontractor shall be jointly and severally  
9 liable for restitution to the subcontractor's employees.

10 **18-107.1.**

11           **ON NOTIFICATION FROM THE COMMISSIONER OF A POSSIBLE VIOLATION**  
12 **UNDER § 18-107 OF THIS TITLE OR A POSSIBLE VIOLATION OF § 3-903 OF THE**  
13 **LABOR AND EMPLOYMENT ARTICLE, THE PUBLIC BODY SHALL WITHHOLD**  
14 **FROM PAYMENT DUE THE CONTRACTOR OR SUBCONTRACTOR AN AMOUNT**  
15 **SUFFICIENT TO:**

16           (1)    **PAY EACH EMPLOYEE OF THE CONTRACTOR OR**  
17 **SUBCONTRACTOR THE FULL AMOUNT OF WAGES DUE UNDER THIS TITLE OR**  
18 **UNDER § 3-903 OF THE LABOR AND EMPLOYMENT ARTICLE; AND**

19           (2)    **SATISFY A LIABILITY OF A CONTRACTOR OR SUBCONTRACTOR**  
20 **FOR PENALTIES ASSESSED UNDER § 3-906 OF THE LABOR AND EMPLOYMENT**  
21 **ARTICLE PENDING A FINAL DETERMINATION.**

22 **18-108.**

23           **(A)**    If the Commissioner determines that the employer violated a provision of  
24 this title or regulations of the Commissioner, the employer shall:

25           (1)    pay restitution to each affected employee; and

26           (2)    pay to the State liquidated damages of \$20 per day for each  
27 employee who was paid less than the hourly rate required under this title.

28           **(B)**    **IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (A) OF**  
29 **THIS SECTION, AN EMPLOYER WHO IS FOUND TO VIOLATE THIS TITLE AND §**  
30 **3-903(A) OF THE LABOR AND EMPLOYMENT ARTICLE SHALL BE SUBJECT TO:**

31           (1)    **TWO TIMES THE DAMAGES FOR EACH VIOLATION OF THIS**  
32 **TITLE; AND**

1                   **(2) THREE TIMES THE DAMAGES FOR EACH VIOLATION OF THIS**  
2 **TITLE IF THE VIOLATION IS FOUND TO BE WILLFUL.**

3           SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall  
4 include in the annual budget for each fiscal year beginning with fiscal year 2010 funds  
5 as necessary for the effective administration and enforcement of this Act.

6           SECTION 3. AND BE IT FURTHER ENACTED, That the Commissioner of  
7 Labor and Industry shall report to the Governor and, in accordance with § 2-1246 of  
8 the State Government Article, the General Assembly on the Commissioner's  
9 investigations of complaints of violations of this Act and the outcomes of those  
10 investigations including any recommendations by the Commissioner to improve the  
11 administration and enforcement of this Act, as well as any other information that the  
12 Commissioner determines relevant.

13           SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
14 Act or the application thereof to any person or circumstance is held invalid for any  
15 reason in a court of competent jurisdiction, the invalidity does not affect other  
16 provisions or any other application of this Act which can be given effect without the  
17 invalid provision or application, and for this purpose the provisions of this Act are  
18 declared severable.

19           SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2008.