

SENATE BILL 909

K3

(9lr0257)

ENROLLED BILL

—Finance/Economic Matters—

Introduced by **The President (By Request – Administration) and Senators Kelley, Raskin, Currie, Forehand, Gladden, Harrington, King, Klausmeier, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Rosapepe, and Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Workplace Fraud Act of 2009**

3 FOR the purpose of prohibiting certain employers from failing to properly classify
4 individuals who perform work for remuneration paid by the employer;
5 authorizing the Commissioner of Labor and Industry to initiate an investigation
6 under certain circumstances to determine whether certain violations occurred;
7 requiring the Commissioner to enforce certain provisions; establishing the
8 method of determining whether an employer–employee relationship exists for
9 purposes of proper classification under certain circumstances; establishing
10 certain presumptions and evidentiary considerations; prohibiting certain
11 employers from knowingly failing to properly classify individuals who perform
12 work for remuneration paid by the employer; providing certain criteria to be

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 used to determine whether a violation is knowing; requiring the Commissioner
2 to make certain investigations; providing for the confidentiality of certain
3 complaints or statements; authorizing the Commissioner to enter a place of
4 business or work site under certain circumstances and to require certain
5 employers to take certain actions; authorizing the Commissioner to issue a
6 subpoena under certain circumstances and to file a complaint in circuit court
7 under certain circumstances; requiring the Commissioner to issue a citation
8 under certain circumstances; requiring the Commissioner to grant an
9 employer's request for a hearing conducted by the Office of Administrative
10 Hearings to contest a citation; requiring the Commissioner to disclose certain
11 evidence and information under certain circumstances; providing that the
12 Commissioner has the burden of proof under certain circumstances; authorizing
13 certain judicial review and appeals under certain circumstances; providing for
14 certain penalties for certain violations of this Act; requiring an employer to
15 come into compliance with certain laws; providing that the requirement for
16 compliance with certain laws after certain violations may include requiring an
17 employer to enter into a certain agreement with a certain governmental unit
18 within a certain time period; limiting the time period for which certain
19 payments may be required for compliance with certain laws after certain
20 violations; requiring the court or an administrative unit to award restitution
21 under certain circumstances; authorizing the court or an administrative unit to
22 award other damages under certain circumstances; requiring the Commissioner
23 to provide notice of potential violations of this Act to the Workers'
24 Compensation Commission, the Office of Unemployment Insurance, the
25 Insurance Administration, and the Comptroller's Office under certain
26 circumstances; requiring cooperation under this Act by certain units of State
27 government; authorizing certain individuals who have not been properly
28 classified as employees to bring a civil action for damages against an employer
29 under certain circumstances; requiring that a civil action be filed within a
30 certain time period; requiring a court to award an individual or class of
31 individuals certain costs and relief under certain circumstances; prohibiting an
32 employer from discriminating against a person under certain circumstances;
33 prohibiting a person from making certain complaints to the Commissioner;
34 authorizing certain individuals to submit certain complaints alleging
35 discrimination; authorizing the Commissioner to investigate certain complaints
36 and file certain complaints in certain circuit courts; requiring the Commissioner
37 to notify a public body of a citation issued for certain violations by an employer;
38 requiring the public body, on notification, to withhold payment to an employer
39 in a certain amount; ~~requiring the Commissioner to file with the Secretary of~~
40 ~~State, the Department of Budget and Management, and the Department of~~
41 ~~General Services a list of certain violators of this Act; authorizing an employer~~
42 ~~to request a review by the Secretary of Labor, Licensing, and Regulation of the~~
43 ~~decision to place the employer on the list; prohibiting certain employers from~~
44 ~~entering into a contract with a public body under certain circumstances;~~
45 requiring certain employers to retain certain records for a certain period of time;
46 requiring certain employers to provide certain individuals notice of their status
47 and classification; prohibiting a person from incorporating or assisting in the

1 incorporation of certain entities for the purposes of facilitating or evading
 2 detection of a violation of this Act; prohibiting certain persons from conspiring
 3 with, aiding and abetting, assisting, advising, or facilitating another person
 4 with violating this Act; establishing certain civil and administrative penalties
 5 under this Act and other laws under the jurisdiction of the Commissioner;
 6 prohibiting a person from taking certain actions maliciously or in bad faith;
 7 authorizing recovery of attorneys' fees under certain circumstances; requiring
 8 certain penalties to be paid into the General Fund of the State; requiring the
 9 Commissioner to prepare certain reports; requiring the Commissioner to adopt
 10 regulations to carry out certain provisions of this Act; establishing certain
 11 unemployment insurance penalties for employers that ~~misclassify~~ fail to
 12 properly classify individuals as employees in violation of this Act; authorizing
 13 the Secretary of Labor, Licensing, and Regulation to adopt certain regulations;
 14 creating certain presumptions under the unemployment insurance law and
 15 workers' compensation law; requiring the Secretary of Labor, Licensing, and
 16 Regulation to consider certain evidence that an employer did not knowingly fail
 17 to properly classify an individual; requiring an employing unit that has
 18 knowingly failed to properly classify an ~~employee as an independent contractor~~
 19 individual as an employee to pay at a certain rate certain unemployment
 20 insurance contributions; prohibiting an employer from ~~misclassifying~~ failing to
 21 properly classify an individual as an employee ~~as an independent contractor~~ for
 22 purposes of workers' compensation; requiring the Workers' Compensation
 23 Commission to pay certain costs; authorizing the Workers' Compensation
 24 Commission to order certain remedies if an employer ~~misclassifies~~ fails to
 25 properly classify an individual as an employee; authorizing the Workers'
 26 Compensation Commission to adopt certain regulations; defining certain terms;
 27 providing for certain funding; making certain provisions of this Act severable;
 28 prohibiting the proposal of emergency regulations under this Act as emergency
 29 regulations; and generally relating to the failure to properly classify an
 30 individual as an employee.

31 BY repealing and reenacting, with amendments,
 32 Article – Labor and Employment
 33 Section 2–107(g), 3–102(a), 3–103, 3–104, 8–201, 8–205, 8–628, 9–202, and
 34 9–316(b)
 35 Annotated Code of Maryland
 36 (2008 Replacement Volume)

37 BY repealing and reenacting, without amendments,
 38 Article – Labor and Employment
 39 Section 3–101
 40 Annotated Code of Maryland
 41 (2008 Replacement Volume)

42 ~~BY repealing and reenacting, with amendments,~~
 43 ~~Article – Labor and Employment~~
 44 ~~Section 3–102(a), 3–103, 3–104, 8–201, 8–628, and 9–202~~

1 ~~Annotated Code of Maryland~~
 2 ~~(2008 Replacement Volume)~~

3 BY adding to
 4 Article – Labor and Employment
 5 Section 3–901 through ~~3–919~~ 3–920 to be under the new subtitle “Subtitle 9.
 6 Workplace Fraud”; 8–201.1, 8–610.1, 9–315.1, and 9–402.1
 7 Annotated Code of Maryland
 8 (2008 Replacement Volume)

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

11 **Article – Labor and Employment**

12 2–107.

13 (g) [For] **NOTWITHSTANDING THE FUNDING PROVISIONS OF ~~§ 3–918~~**
 14 **§ 3–919 OF THIS ARTICLE, FOR** fiscal year 2007 and for each subsequent fiscal year,
 15 the Governor shall include in the annual budget bill submitted to the General
 16 Assembly an appropriation for the Division of Labor and Industry sufficient to
 17 implement the provisions of this section, including amounts not less than:

18 (1) \$315,000 for implementation of the Employment Standards Service
 19 Unit in the Division; and

20 (2) \$385,000 for implementation of the Prevailing Wage Unit in the
 21 Division.

22 3–101.

23 (a) In this title the following words have the meanings indicated.

24 (b) “Commissioner” means the Commissioner of Labor and Industry.

25 (c) (1) “Employ” means to engage an individual to work.

26 (2) “Employ” includes:

27 (i) allowing an individual to work; and

28 (ii) instructing an individual to be present at a work site.

29 3–102.

30 (a) In addition to any duties set forth elsewhere, the Commissioner shall:

- 1 (1) enforce Subtitle 2 of this title;
- 2 (2) carry out Subtitle 3 of this title; [and]
- 3 (3) enforce Subtitle 4 of this title; **AND**
- 4 (4) **ENFORCE SUBTITLE 9 OF THIS TITLE.**

5 3–103.

6 (a) The Commissioner may conduct an investigation under Subtitle 2 of this
7 title, on the Commissioner’s own initiative or may require a written complaint.

8 (b) The Commissioner may conduct an investigation under Subtitle 4 of this
9 title, on the Commissioner’s own initiative or on receipt of a written complaint.

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

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

15 (2) The Commissioner may investigate whether § 3–702 of this title
16 has been violated on receipt of a written complaint of an applicant for employment or
17 an employee.

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

20 (1) **ON THE COMMISSIONER’S OWN INITIATIVE;**

21 (2) **ON RECEIPT OF A WRITTEN COMPLAINT SIGNED BY THE**
22 **PERSON SUBMITTING THE COMPLAINT; OR**

23 (3) **ON REFERRAL FROM ANOTHER UNIT OF STATE GOVERNMENT.**

24 3–104.

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

27 **SUBTITLE 9. WORKPLACE FRAUD.**

28 **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 THAT EMPLOYS AN INDIVIDUAL
14 IN THE STATE.

15 (D) "EXEMPT PERSON" MEANS AN INDIVIDUAL WHO:

16 (1) PERFORMS SERVICES IN A PERSONAL CAPACITY AND
17 EMPLOYS NO INDIVIDUALS OTHER THAN:

18 (I) A SPOUSE OF THE EXEMPT PERSON;

19 (II) CHILDREN OF THE EXEMPT PERSON; OR

20 (III) PARENTS OF THE EXEMPT PERSON;

21 (2) PERFORMS SERVICES FREE FROM DIRECTION AND CONTROL
22 OVER THE MEANS AND MANNER OF PROVIDING THE SERVICES, SUBJECT ONLY
23 TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES ARE PROVIDED
24 TO SPECIFY THE DESIRED RESULT;

25 (3) FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO
26 PROVIDE THE SERVICE;

1 **(4) OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE**
2 **FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES:**

3 **(I) IN WHICH THE INDIVIDUAL:**

4 **1. OWNS ALL OF THE ASSETS AND PROFITS OF THE**
5 **BUSINESS; AND**

6 **2. HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR**
7 **ALL OF THE DEBTS AND LIABILITIES OF THE BUSINESS, UNLESS THE BUSINESS**
8 **IS ORGANIZED AS A SINGLE-OWNED CORPORATE ENTITY, TO WHICH SOLE,**
9 **UNLIMITED PERSONAL LIABILITY DOES NOT APPLY; AND**

10 **(II) FOR WHICH:**

11 **1. THE INDIVIDUAL DOES NOT PAY TAXES FOR THE**
12 **BUSINESS SEPARATELY BUT REPORTS BUSINESS INCOME AND LOSSES ON THE**
13 **INDIVIDUAL'S PERSONAL TAX RETURN; AND**

14 **2. IF THE BUSINESS IS ORGANIZED AS A CORPORATE**
15 **ENTITY AND THE INDIVIDUAL OTHERWISE QUALIFIES AS AN EXEMPT PERSON**
16 **UNDER THIS SUBSECTION, THE INDIVIDUAL FILES A SEPARATE FEDERAL**
17 **INFORMATIONAL TAX RETURN FOR THE ENTITY AS REQUIRED BY LAW;**

18 **(5) EXERCISES COMPLETE CONTROL OVER THE MANAGEMENT**
19 **AND OPERATIONS OF THE BUSINESS; AND**

20 **(6) EXERCISES THE RIGHT AND OPPORTUNITY ON A CONTINUING**
21 **BASIS TO PERFORM THE SERVICES OF THE BUSINESS FOR MULTIPLE ENTITIES**
22 **AT THE INDIVIDUAL'S SOLE CHOICE AND DISCRETION.**

23 ~~(D)~~ **(E) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE,**
24 **DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE TRUTH.**

25 ~~(E)~~ **(F) "LANDSCAPING SERVICES" INCLUDES THE FOLLOWING**
26 **SERVICES:**

27 **(1) GARDEN MAINTENANCE AND PLANTING;**

28 **(2) LAWN CARE INCLUDING FERTILIZING, MOWING, MULCHING,**
29 **SEEDING, AND SPRAYING;**

30 **(3) SEEDING AND MOWING OF HIGHWAY STRIPS;**

1 (4) SOD LAYING;

2 (5) TURF INSTALLATION, EXCEPT ARTIFICIAL;

3 (6) ORNAMENTAL BUSH PLANTING, PRUNING, BRACING,
4 SPRAYING, AND REMOVAL; AND

5 (7) ORNAMENTAL TREE PLANTING, PRUNING, BRACING,
6 SPRAYING, AND REMOVAL.

7 ~~(F) "PACKAGE DELIVERY SERVICES" MEANS PICKING UP INDIVIDUAL~~
8 ~~PACKAGES FROM A SENDER OR DELIVERING INDIVIDUAL PACKAGES TO A~~
9 ~~RECIPIENT, WHERE MORE THAN HALF OF THE PACKAGES TYPICALLY CARRIED~~
10 ~~WEIGH 150 POUNDS OR LESS.~~

11 (G) (1) "PLACE OF BUSINESS" MEANS THE OFFICE OR
12 HEADQUARTERS OF THE EMPLOYER.

13 (2) "PLACE OF BUSINESS" DOES NOT INCLUDE A WORK SITE AT
14 WHICH THE EMPLOYER HAS BEEN CONTRACTED TO PERFORM SERVICES.

15 ~~(G)~~ (H) "PUBLIC BODY" MEANS:

16 (1) THE STATE;

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

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

22 ~~(H) "SOLE PROPRIETOR" MEANS AN INDIVIDUAL WHO:~~

23 ~~(1) PERFORMS SERVICES IN A PERSONAL CAPACITY AND~~
24 ~~EMPLOYS NO OTHER INDIVIDUALS;~~

25 ~~(2) PERFORMS SERVICES FREE FROM THE DIRECTION AND~~
26 ~~CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE,~~
27 ~~SUBJECT ONLY TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES~~
28 ~~ARE PROVIDED TO SPECIFY THE DESIRED RESULT;~~

29 ~~(3) FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO~~
30 ~~PROVIDE THE SERVICE;~~

1 ~~(4) OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE~~
2 ~~FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES IN~~
3 ~~WHICH THE INDIVIDUAL:~~

4 ~~(I) HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR ALL~~
5 ~~OF THE DEBTS AND LIABILITIES OF THE BUSINESS;~~

6 ~~(II) DOES NOT PAY TAXES FOR THE BUSINESS SEPARATELY,~~
7 ~~BUT REPORTS BUSINESS INCOME AND LOSSES ON THE INDIVIDUAL'S PERSONAL~~
8 ~~TAX RETURN; AND~~

9 ~~(III) OWNS ALL OF THE ASSETS AND PROFITS OF THE~~
10 ~~BUSINESS;~~

11 ~~(5) EXERCISES COMPLETE CONTROL OVER THE MANAGEMENT~~
12 ~~AND OPERATIONS OF THE BUSINESS; AND~~

13 ~~(6) EXERCISES THE RIGHT AND OPPORTUNITY ON A CONTINUING~~
14 ~~BASIS TO PERFORM THE SERVICES OF THE BUSINESS FOR MULTIPLE ENTITIES~~
15 ~~AT THE INDIVIDUAL'S SOLE CHOICE AND DISCRETION.~~

16 **3-902.**

17 **THIS SUBTITLE APPLIES ONLY TO THE FOLLOWING INDUSTRIES:**

18 (1) CONSTRUCTION SERVICES; AND

19 (2) LANDSCAPING SERVICES; AND

20 ~~(3) PACKAGE DELIVERY SERVICES.~~

21 **3-903.**

22 (A) AN EMPLOYER MAY NOT FAIL TO PROPERLY CLASSIFY AN
23 INDIVIDUAL WHO PERFORMS WORK FOR REMUNERATION PAID BY THE
24 EMPLOYER.

25 (B) AN EMPLOYER HAS FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL
26 WHEN AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS AS DETERMINED
27 UNDER SUBSECTION (C) OF THIS SECTION BUT THE EMPLOYER HAS NOT
28 CLASSIFIED THE INDIVIDUAL AS AN EMPLOYEE.

1 **(C) (1) FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE ONLY,**
2 **WORK PERFORMED BY AN INDIVIDUAL FOR REMUNERATION PAID BY AN**
3 **EMPLOYER SHALL BE PRESUMED TO CREATE AN EMPLOYER-EMPLOYEE**
4 **RELATIONSHIP, UNLESS:**

5 **(I) THE INDIVIDUAL IS ~~A SOLE PROPRIETOR~~ AN EXEMPT**
6 **PERSON; OR**

7 **(II) AN EMPLOYER DEMONSTRATES THAT:**

8 **1. THE INDIVIDUAL WHO PERFORMS THE WORK IS**
9 **FREE FROM CONTROL AND DIRECTION OVER ITS PERFORMANCE BOTH IN FACT**
10 **AND UNDER THE CONTRACT;**

11 **2. THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN**
12 **AN INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT**
13 **INVOLVED IN THE WORK; AND**

14 **3. THE WORK IS:**

15 **A. OUTSIDE OF THE USUAL COURSE OF BUSINESS OF**
16 **THE PERSON FOR WHOM THE WORK IS PERFORMED; OR**

17 **B. PERFORMED OUTSIDE OF ANY PLACE OF**
18 **BUSINESS OF THE PERSON FOR WHOM THE WORK IS PERFORMED.**

19 **(2) WORK IS OUTSIDE OF THE USUAL COURSE OF BUSINESS OF**
20 **THE PERSON FOR WHOM IT IS PERFORMED UNDER PARAGRAPH (1) OF THIS**
21 **SUBSECTION IF:**

22 **(I) THE INDIVIDUAL PERFORMS THE WORK OFF THE**
23 **EMPLOYER'S PREMISES;**

24 **(II) THE INDIVIDUAL PERFORMS WORK THAT IS NOT**
25 **INTEGRATED INTO THE EMPLOYER'S OPERATION; OR**

26 **(III) THE WORK PERFORMED IS UNRELATED TO THE**
27 **EMPLOYER'S BUSINESS.**

28 **(3) BY CONTRACT, AN EMPLOYER MAY ENGAGE ANOTHER**
29 **BUSINESS ENTITY, WHICH MAY HAVE ITS OWN EMPLOYEES, TO DO THE SAME**
30 **TYPE OF WORK IN WHICH THE EMPLOYER ENGAGES, AT THE SAME LOCATION**
31 **WHERE THE EMPLOYER IS WORKING, WITHOUT ESTABLISHING AN**

1 EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE TWO CONTRACTING
2 ENTITIES.

3 (D) THE COMMISSIONER SHALL ADOPT REGULATIONS TO EXPLAIN
4 FURTHER AND PROVIDE SPECIFIC EXAMPLES OF THE APPLICATION OF
5 SUBSECTION (C) OF THIS SECTION.

6 **3-904.**

7 (A) AN EMPLOYER MAY NOT KNOWINGLY FAIL TO PROPERLY CLASSIFY
8 AN INDIVIDUAL WHO PERFORMS WORK FOR REMUNERATION PAID BY THE
9 EMPLOYER.

10 (B) AN EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY CLASSIFY AN
11 INDIVIDUAL WHEN:

12 (1) AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS AS
13 DETERMINED UNDER § 3-903(C) OF THIS SUBTITLE; AND

14 (2) THE EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY
15 CLASSIFY THE INDIVIDUAL AS AN EMPLOYEE.

16 ~~(C) IN DETERMINING WHETHER AN EMPLOYER KNOWINGLY FAILED TO~~
17 ~~PROPERLY CLASSIFY AN INDIVIDUAL, THE COMMISSIONER SHALL CONSIDER~~
18 ~~WHETHER, PRIOR TO HAVING THE INDIVIDUAL PERFORM WORK, THE~~
19 ~~EMPLOYER:~~

20 ~~(1) SOUGHT AND OBTAINED EVIDENCE THAT THE INDIVIDUAL:~~

21 ~~(I) AS A SOLE PROPRIETOR, REPORTS BUSINESS INCOME~~
22 ~~AND LOSSES ON THE SOLE PROPRIETOR'S PERSONAL INCOME TAX RETURNS; OR~~

23 ~~(II) AS AN INDEPENDENT CONTRACTOR:~~

24 ~~1. WITHHOLDS, REPORTS, AND REMITS PAYROLL~~
25 ~~TAXES ON BEHALF OF ALL INDIVIDUALS WORKING FOR THE INDEPENDENT~~
26 ~~CONTRACTOR;~~

27 ~~2. PAYS UNEMPLOYMENT INSURANCE TAXES FOR~~
28 ~~ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR; AND~~

29 ~~3. MAINTAINS WORKERS' COMPENSATION~~
30 ~~INSURANCE; AND~~

1 ~~(2) PROVIDED TO THE SOLE PROPRIETOR OR INDEPENDENT~~
2 ~~CONTRACTOR A WRITTEN NOTICE OF THE STATUS OR CLASSIFICATION OF THE~~
3 ~~SOLE PROPRIETOR OR INDEPENDENT CONTRACTOR AND ALL OF THE~~
4 ~~IMPLICATIONS OF THAT STATUS OR CLASSIFICATION AS REQUIRED BY § 3-914~~
5 ~~OF THIS SUBTITLE.~~

6 (c) THE COMMISSIONER SHALL CONSIDER, AS STRONG EVIDENCE THAT
7 THE EMPLOYER DID NOT KNOWINGLY FAIL TO PROPERLY CLASSIFY AN
8 INDIVIDUAL, WHETHER:

9 (1) BEFORE A COMPLAINT WAS FILED AGAINST THE EMPLOYER
10 OR THE COMMISSIONER BEGAN AN INVESTIGATION OF THE EMPLOYER, THE
11 EMPLOYER:

12 (i) SOUGHT AND OBTAINED EVIDENCE THAT THE
13 INDIVIDUAL:

14 1. IS AN EXEMPT PERSON; OR

15 2. AS AN INDEPENDENT CONTRACTOR:

16 A. WITHHOLDS, REPORTS, AND REMITS PAYROLL
17 TAXES ON BEHALF OF ALL INDIVIDUALS WORKING FOR THE INDEPENDENT
18 CONTRACTOR;

19 B. PAYS UNEMPLOYMENT INSURANCE TAXES FOR
20 ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR; AND

21 C. MAINTAINS WORKERS' COMPENSATION
22 INSURANCE; AND

23 (ii) PROVIDED TO THE EXEMPT PERSON OR INDEPENDENT
24 CONTRACTOR A WRITTEN NOTICE AS REQUIRED BY § 3-914 OF THIS SUBTITLE;
25 OR

26 (2) THE EMPLOYER:

27 (i) 1. CLASSIFIES ALL WORKERS WHO PERFORM THE
28 SAME OR SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER AS
29 INDEPENDENT CONTRACTORS; AND

30 2. REPORTS THE INCOME OF THE WORKERS TO THE
31 INTERNAL REVENUE SERVICE AS REQUIRED BY FEDERAL LAW; AND

1 **(II) HAS RECEIVED A DETERMINATION FROM THE INTERNAL**
2 **REVENUE SERVICE THAT THE INDIVIDUAL OR A WORKER WHO PERFORMS THE**
3 **SAME OR SUBSTANTIALLY THE SAME TASK AS THE INDIVIDUAL IS AN**
4 **INDEPENDENT CONTRACTOR.**

5 **(D) THE COMMISSIONER SHALL ADOPT REGULATIONS TO PROVIDE**
6 **GUIDANCE AS TO WHAT CONSTITUTES THE EVIDENCE RELEVANT TO THE**
7 **DETERMINATION OF WHETHER AN ~~EMPLOYER'S FAILURE~~ EMPLOYER**
8 **KNOWINGLY FAILED TO PROPERLY CLASSIFY ~~WAS KNOWING~~ AN EMPLOYEE.**

9 **3-905.**

10 **(A) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO**
11 **DETERMINE COMPLIANCE WITH THIS SUBTITLE AND REGULATIONS ADOPTED**
12 **UNDER THIS SUBTITLE.**

13 **(B) (1) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY**
14 **AN INDIVIDUAL A PERSON AS PART OF AN INVESTIGATION UNDER THIS SECTION**
15 **IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE CONSENT OF THE**
16 **INDIVIDUAL PERSON UNTIL THE INVESTIGATION IS CONCLUDED AND A**
17 **CITATION IS ISSUED.**

18 **(2) ANY WRITTEN OR ORAL STATEMENT MADE BY AN INDIVIDUAL**
19 **ALLEGED TO BE EMPLOYED BY THE RESPONDENT AS PART OF AN**
20 **INVESTIGATION UNDER THIS SECTION IS CONFIDENTIAL AND MAY NOT BE**
21 **DISCLOSED WITHOUT THE CONSENT OF THE INDIVIDUAL.**

22 **(C) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS OR WORK**
23 **SITE TO:**

24 **(1) OBSERVE WORK BEING PERFORMED;**

25 **(2) INTERVIEW INDIVIDUALS ON THE WORK SITE, INCLUDING**
26 **THOSE IDENTIFIED AS EMPLOYEES AND INDEPENDENT CONTRACTORS; AND**

27 **(3) REVIEW AND COPY RECORDS.**

28 **(D) THE COMMISSIONER MAY REQUIRE EACH EMPLOYER TO:**

29 **(1) IDENTIFY AND PRODUCE ALL RECORDS RELEVANT TO THE**
30 **CLASSIFICATION OF EACH INDIVIDUAL;**

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

4 (3) AT THE OPTION OF THE EMPLOYER, SUBMIT A WRITTEN
5 STATEMENT ABOUT THE CLASSIFICATION OF EACH EMPLOYEE ON THE FORM
6 PROVIDED BY THE COMMISSIONER, WITH ANY RELEVANT RECORDS ATTACHED.

7 (E) AN EMPLOYER THAT FAILS TO PRODUCE RECORDS OR A WRITTEN
8 STATEMENT UNDER SUBSECTION (D) OF THIS SECTION WITHIN ~~5~~ 15 BUSINESS
9 DAYS ~~OF~~ AFTER THE COMMISSIONER'S REQUEST SHALL BE SUBJECT TO A FINE
10 NOT EXCEEDING \$500 PER DAY FOR EACH DAY THE RECORDS ARE NOT
11 PRODUCED.

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

14 (2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED
15 UNDER THIS SUBSECTION, THE COMMISSIONER MAY FILE A COMPLAINT IN THE
16 CIRCUIT COURT FOR THE COUNTY WHERE THE PERSON RESIDES, IS EMPLOYED,
17 OR HAS A PLACE OF BUSINESS, REQUESTING AN ORDER DIRECTING
18 COMPLIANCE WITH THE SUBPOENA.

19 **3-906.**

20 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
21 AN EMPLOYER HAS VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED
22 UNDER THIS SUBTITLE, THE COMMISSIONER SHALL PROMPTLY ISSUE A
23 CITATION TO THE EMPLOYER.

24 (B) EACH CITATION SHALL:

25 (1) DESCRIBE IN DETAIL THE NATURE OF THE ALLEGED
26 VIOLATION;

27 (2) CITE THE PROVISION OF THIS SUBTITLE OR ANY REGULATION
28 THAT THE EMPLOYER IS ALLEGED TO HAVE VIOLATED; AND

29 (3) STATE THE CIVIL PENALTY, IF ANY, THAT THE COMMISSIONER
30 PROPOSES TO ASSESS.

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

1 (1) A COPY OF THE CITATION; AND

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

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

6 (E) IF A HEARING IS NOT REQUESTED WITHIN 15 DAYS, THE CITATION,
7 INCLUDING ANY PENALTIES, SHALL BECOME A FINAL ORDER OF THE
8 COMMISSIONER.

9 (F) IF THE EMPLOYER REQUESTS A HEARING, THE COMMISSIONER
10 SHALL DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE
11 AUTHORITY TO HOLD A HEARING AND ISSUE ~~PROPOSED~~ FINDINGS OF FACT AND,
12 CONCLUSIONS OF LAW, AND ~~A PROPOSED AN ORDER,~~ AND ASSESS A PENALTY
13 UNDER § 3-909 OF THIS SUBTITLE IN ACCORDANCE WITH TITLE 10, SUBTITLE 2
14 OF THE STATE GOVERNMENT ARTICLE.

15 (G) WITHIN 15 DAYS AFTER A REQUEST, IN ACCORDANCE WITH TITLE
16 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE AND THE APPLICABLE
17 REGULATIONS OF THE DEPARTMENT AND THE OFFICE OF ADMINISTRATIVE
18 HEARINGS, THE COMMISSIONER SHALL PROVIDE COPIES OF ALL RELEVANT
19 EVIDENCE, INCLUDING A LIST OF POTENTIAL WITNESSES, ON WHICH THE
20 COMMISSIONER INTENDS TO RELY AT ANY ADMINISTRATIVE HEARING UNDER
21 THIS SUBTITLE.

22 (H) THE COMMISSIONER HAS THE BURDEN OF PROOF TO SHOW THAT
23 AN EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL
24 AS AN EMPLOYEE.

25 ~~(G) (I) A PROPOSED DECISION OF AN ADMINISTRATIVE LAW JUDGE~~
26 ~~ISSUED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE~~
27 ~~GOVERNMENT ARTICLE SHALL BECOME A FINAL ORDER OF THE~~
28 ~~COMMISSIONER UNLESS, WITHIN 15 DAYS OF THE ISSUANCE OF THE PROPOSED~~
29 ~~DECISION;~~

30 ~~(1) THE COMMISSIONER ORDERS REVIEW OF THE PROPOSED~~
31 ~~DECISION; OR~~

32 ~~(2) AN EMPLOYER SUBMITS TO THE COMMISSIONER A WRITTEN~~
33 ~~REQUEST FOR REVIEW OF THE PROPOSED DECISION.~~

1 ~~(H) AFTER REVIEW OF THE PROPOSED DECISION UNDER SUBSECTION~~
2 ~~(G) OF THIS SECTION, WITH OR WITHOUT A HEARING ON THE RECORD, THE~~
3 ~~COMMISSIONER SHALL ISSUE AN ORDER THAT, ON THE BASIS OF FINDINGS OF~~
4 ~~FACT AND CONCLUSIONS OF LAW, AFFIRMS, MODIFIES, OR VACATES THE~~
5 ~~PROPOSED DECISION.~~

6 (J) ANY PARTY AGGRIEVED BY A FINAL ORDER OF THE COMMISSIONER
7 UNDER SUBSECTION (I) OF THIS SECTION MAY SEEK JUDICIAL REVIEW AND
8 APPEAL UNDER §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

9 **3-907.**

10 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
11 AN EMPLOYER FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
12 EMPLOYEE IN VIOLATION OF § 3-903 OF THIS SUBTITLE, OR KNOWINGLY FAILED
13 TO PROPERLY CLASSIFY AS AN EMPLOYEE AN EMPLOYEE IN VIOLATION OF §
14 **3-904** OF THIS SUBTITLE, AND ISSUES A CITATION, THE COMMISSIONER SHALL
15 NOTIFY THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE,
16 THE INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION
17 COMMISSION TO ENABLE THESE AGENCIES TO ASSURE AN EMPLOYER'S
18 COMPLIANCE WITH THEIR LAWS, UTILIZING THEIR OWN DEFINITIONS,
19 STANDARDS, AND PROCEDURES.

20 (B) (1) AN EMPLOYER FOUND IN VIOLATION OF § 3-903 OR § 3-904
21 OF THIS SUBTITLE BY A FINAL ORDER OF A COURT OR THE COMMISSIONER AN
22 ADMINISTRATIVE UNIT SHALL BE REQUIRED, WITHIN ~~30~~ 45 DAYS ~~OF~~ AFTER THE
23 FINAL ORDER:

24 ~~(1)~~ (I) TO PAY RESTITUTION TO ANY INDIVIDUAL NOT
25 PROPERLY CLASSIFIED; AND

26 ~~(2)~~ (II) TO OTHERWISE COME INTO COMPLIANCE WITH ALL
27 APPLICABLE LABOR LAWS, INCLUDING THOSE RELATED TO INCOME TAX
28 WITHHOLDING, UNEMPLOYMENT INSURANCE, WAGE LAWS, AND WORKERS'
29 COMPENSATION.

30 (2) THE REQUIREMENT FOR COMPLIANCE WITH APPLICABLE
31 LABOR LAWS UNDER SUBSECTION (B)(1)(II) OF THIS SECTION MAY INCLUDE
32 REQUIRING THE EMPLOYER TO ENTER INTO AN AGREEMENT, WITHIN 45 DAYS
33 AFTER THE FINAL ORDER, WITH A GOVERNMENTAL UNIT FOR PAYMENT OF ANY
34 AMOUNTS OWED BY THE EMPLOYER TO THE UNIT.

35 (3) THE REQUIREMENT FOR COMPLIANCE WITH APPLICABLE
36 LABOR LAWS UNDER PARAGRAPH (B)(1)(II) OF THIS SECTION:

1 (I) MAY NOT REQUIRE PAYMENTS FOR MORE THAN A
2 12-MONTH PERIOD; AND

3 (II) MAY NOT REQUIRE PAYMENTS DUE FOR A PERIOD
4 BEFORE THE 12-MONTH PERIOD BEFORE THE CITATION WAS ISSUED.

5 (C) AN EMPLOYER FOUND IN VIOLATION OF § 3-904 OF THIS SUBTITLE
6 BY A FINAL ORDER OF A COURT OR AN ADMINISTRATIVE UNIT SHALL BE
7 REQUIRED, WITHIN 45 DAYS AFTER THE FINAL ORDER:

8 (1) TO PAY RESTITUTION TO ANY INDIVIDUAL NOT PROPERLY
9 CLASSIFIED; AND

10 (2) TO OTHERWISE COME INTO COMPLIANCE WITH ALL
11 APPLICABLE LABOR LAWS, INCLUDING THOSE RELATED TO INCOME TAX
12 WITHHOLDING, UNEMPLOYMENT INSURANCE, WAGE LAWS, AND WORKERS'
13 COMPENSATION.

14 **3-908.**

15 (A) AN EMPLOYER IN VIOLATION OF § 3-903 OF THIS SUBTITLE WHO
16 COMES INTO TIMELY COMPLIANCE WITH ALL APPLICABLE LABOR LAWS AS
17 REQUIRED BY § 3-907(B) OF THIS SUBTITLE MAY NOT BE ASSESSED A CIVIL
18 PENALTY.

19 (B) (1) AN EMPLOYER IN VIOLATION OF § 3-903 OF THIS SUBTITLE
20 WHO FAILS TO COME INTO TIMELY COMPLIANCE WITH ALL APPLICABLE LABOR
21 LAWS AS REQUIRED BY § 3-907(B) OF THIS SUBTITLE SHALL BE ASSESSED A
22 CIVIL PENALTY OF UP TO ~~\$3,000~~ \$1,000 FOR EACH EMPLOYEE FOR WHOM THE
23 EMPLOYER IS NOT IN COMPLIANCE.

24 (2) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
25 COMMISSIONER SHALL CONSIDER THE FACTORS SET FORTH IN § 3-909(B) OF
26 THIS SUBTITLE.

27 (C) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES UNDER
28 THIS SECTION BY ONLY ONE FINAL ORDER OF A COURT OR ADMINISTRATIVE
29 UNIT FOR THE SAME ACTIONS CONSTITUTING NONCOMPLIANCE WITH
30 APPLICABLE LABOR LAWS AS REQUIRED BY § 3-907(B) AND (C) OF THIS
31 SUBTITLE.

32 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
33 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,

1 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
2 MULTIPLE FINAL ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE
3 UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT
4 INSURANCE, THE INSURANCE ADMINISTRATION, AND THE WORKERS'
5 COMPENSATION COMMISSION.

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

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

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

13 **3-909.**

14 (A) AN EMPLOYER FOUND TO HAVE KNOWINGLY FAILED TO PROPERLY
15 CLASSIFY AN INDIVIDUAL IN VIOLATION OF § 3-904 OF THIS SUBTITLE SHALL BE
16 ASSESSED A CIVIL PENALTY OF UP TO \$5,000 FOR EACH EMPLOYEE WHO WAS
17 NOT PROPERLY CLASSIFIED.

18 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
19 COMMISSIONER OR THE ADMINISTRATIVE LAW JUDGE SHALL CONSIDER:

20 (1) THE GRAVITY OF THE VIOLATION;

21 (2) THE SIZE OF THE EMPLOYER'S BUSINESS;

22 (3) THE EMPLOYER'S GOOD FAITH;

23 (4) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS
24 SUBTITLE; AND

25 (5) WHETHER THE EMPLOYER:

26 (I) HAS BEEN FOUND, BY A COURT OR AN ADMINISTRATIVE
27 UNIT, TO HAVE DEPRIVED THE EMPLOYEE OF ANY RIGHTS TO WHICH THE
28 EMPLOYEE WOULD HAVE BEEN ENTITLED UNDER A STATE PROTECTIVE LABOR
29 LAW, INCLUDING BUT NOT LIMITED TO:

30 1. ANY PROVISION OF ~~THE LABOR AND~~
31 ~~EMPLOYMENT ARTICLE~~ THIS ARTICLE;

1 2. THE STATE PREVAILING WAGE LAW, UNDER §§
2 17-221 AND 17-222 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

3 3. THE LIVING WAGE LAW, UNDER § 18-108 OF THE
4 STATE FINANCE AND PROCUREMENT ARTICLE; AND

5 (II) HAS MADE RESTITUTION AND COME INTO COMPLIANCE
6 WITH ALL SUCH STATE PROTECTIVE LABOR LAWS WITH RESPECT TO THE
7 EMPLOYEE.

8 (C) IF THE COURT OR AN ADMINISTRATIVE UNIT DETERMINES THAT AN
9 INDIVIDUAL OR CLASS OF INDIVIDUALS IS ENTITLED TO RESTITUTION AS A
10 RESULT OF THE EMPLOYER'S VIOLATION OF § 3-904 OF THIS SUBTITLE, THE
11 COURT OR ADMINISTRATIVE UNIT:

12 (1) SHALL AWARD EACH INDIVIDUAL ANY RESTITUTION TO WHICH
13 THE INDIVIDUAL MAY BE ENTITLED; AND

14 (2) MAY AWARD EACH INDIVIDUAL AN ADDITIONAL AMOUNT UP TO
15 THREE TIMES THE AMOUNT OF SUCH RESTITUTION.

16 ~~(C)~~ (D) AN EMPLOYER IN VIOLATION OF § 3-904 OF THIS SUBTITLE
17 MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH IN
18 SUBSECTION (A) OF THIS SECTION IF THE EMPLOYER HAS BEEN FOUND
19 PREVIOUSLY TO HAVE VIOLATED THIS SUBTITLE BY A FINAL ORDER OF A COURT
20 OR AN ADMINISTRATIVE UNIT.

21 ~~(D)~~ (E) AN EMPLOYER WHO HAS BEEN FOUND BY A FINAL ORDER OF A
22 COURT OR AN ADMINISTRATIVE UNIT TO HAVE VIOLATED § 3-904 OF THIS
23 SUBTITLE THREE OR MORE TIMES MAY BE ASSESSED AN ADMINISTRATIVE
24 PENALTY OF UP TO \$20,000 FOR EACH EMPLOYEE.

25 ~~(D)~~ ~~(E)~~ (F) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES
26 UNDER THIS SECTION OR § 8-201.1 OR § 9-402.1 OF THIS ARTICLE BY ONLY ONE
27 FINAL ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME ACTIONS
28 CONSTITUTING A VIOLATION OF THIS SUBTITLE.

29 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
30 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,
31 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
32 ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE UNITS, INCLUDING
33 THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE

1 INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION
2 COMMISSION.

3 ~~(E) (F)~~ (G) ANY PENALTY ISSUED UNDER THIS SECTION AGAINST AN
4 EMPLOYER SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR
5 BUSINESS ENTITY THAT:

6 (1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS
7 THE EMPLOYER AGAINST WHOM THE PENALTY WAS ASSESSED, ~~IF~~ UNLESS THE
8 PRINCIPAL OR OFFICER KNOWINGLY PARTICIPATED IN THE VIOLATION FOR
9 WHICH THE PENALTY WAS IMPOSED DID NOT OR WITH THE EXERCISE OF
10 REASONABLE DILIGENCE COULD NOT KNOW OF THE VIOLATION FOR WHICH THE
11 PENALTY WAS IMPOSED; AND

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

14 **3-910.**

15 AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE
16 DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE
17 DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE
18 COMPTROLLER, THE MARYLAND INSURANCE ADMINISTRATION, AND OTHER
19 STATE AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING
20 ANY SUSPECTED FAILURE TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
21 EMPLOYEE.

22 **3-911.**

23 (A) (1) ~~NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER THIS~~
24 ~~SUBTITLE, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN~~
25 ~~INDIVIDUAL WHO HAS NOT BEEN PROPERLY CLASSIFIED AS AN EMPLOYEE MAY~~
26 ~~BRING A CIVIL ACTION FOR ECONOMIC DAMAGES AGAINST THE EMPLOYER FOR~~
27 ~~ANY VIOLATION OF THIS SUBTITLE.~~

28 ~~(2) AN INDIVIDUAL MAY NOT BRING A CIVIL ACTION UNDER THIS~~
29 ~~SECTION IF THE INDIVIDUAL HAS RECEIVED RESTITUTION OR ANY OTHER~~
30 ~~COMPENSATION UNDER THIS SUBTITLE.~~

31 (2) AN INDIVIDUAL MAY NOT BRING A CIVIL ACTION UNDER THIS
32 SECTION IF A FINAL ORDER OF AN ADMINISTRATIVE UNIT OR OF A COURT HAS
33 BEEN ISSUED UNDER § 3-906 OF THIS SUBTITLE.

1 (B) AN ACTION FILED UNDER THIS SECTION SHALL BE FILED WITHIN 3
2 YEARS ~~OF~~ AFTER THE DATE THE CAUSE OF ACTION ACCRUES.

3 (C) IF THE COURT DETERMINES THAT AN INDIVIDUAL OR CLASS OF
4 INDIVIDUALS IS ENTITLED TO JUDGMENT IN AN ACTION AGAINST AN EMPLOYER
5 FILED IN ACCORDANCE WITH THIS SECTION, THE COURT MAY AWARD EACH
6 INDIVIDUAL:

7 (1) ANY DAMAGES TO WHICH THE INDIVIDUAL MAY BE ENTITLED
8 UNDER SUBSECTION (A) OF THIS SECTION;

9 (2) AN ADDITIONAL AMOUNT UP TO THREE TIMES THE AMOUNT
10 OF ANY SUCH DAMAGES, IF THE EMPLOYER KNOWINGLY FAILED TO PROPERLY
11 CLASSIFY THE INDIVIDUAL;

12 (3) REASONABLE COUNSEL FEES AND OTHER COSTS OF THE
13 ACTION; AND

14 (4) ANY OTHER APPROPRIATE RELIEF.

15 **3-912.**

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

18 (1) FILES A COMPLAINT WITH THE EMPLOYER OR THE
19 COMMISSIONER ALLEGING THAT THE EMPLOYER VIOLATED ANY PROVISION OF
20 THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE;

21 (2) BRINGS AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING
22 INVOLVING A VIOLATION OF THIS SUBTITLE; OR

23 (3) TESTIFIES IN AN ACTION AUTHORIZED UNDER THIS SUBTITLE
24 OR A PROCEEDING INVOLVING A VIOLATION OF THIS SUBTITLE.

25 ~~(B) AN INDIVIDUAL MAY NOT:~~

26 ~~(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE~~
27 ~~COMMISSIONER; OR~~

28 ~~(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE OR A~~
29 ~~PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE.~~

1 ~~(B)~~ (1) AN INDIVIDUAL WHO BELIEVES THAT AN EMPLOYER
2 HAS DISCRIMINATED IN ANY MANNER OR TAKEN ADVERSE ACTION AGAINST THE
3 INDIVIDUAL IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT
4 TO THE COMMISSIONER A WRITTEN COMPLAINT THAT ALLEGES THE
5 DISCRIMINATION AND THAT INCLUDES THE SIGNATURE OF THE INDIVIDUAL.

6 (2) AN INDIVIDUAL SHALL FILE A COMPLAINT UNDER THIS
7 SUBSECTION WITHIN 180 DAYS AFTER THE ALLEGED DISCRIMINATION OCCURS.

8 ~~(C)~~ (1) ON RECEIPT OF A COMPLAINT UNDER SUBSECTION (C)
9 OF THIS SECTION, THE COMMISSIONER MAY INVESTIGATE.

10 (2) THE COMMISSIONER SHALL PROVIDE THE EMPLOYER WITH
11 AN OPPORTUNITY TO RESPOND TO THE ALLEGATIONS IN THE COMPLAINT.

12 (3) IF, AFTER INVESTIGATION AND CONSIDERATION OF ANY
13 RESPONSE FROM THE EMPLOYER, THE COMMISSIONER DETERMINES THAT AN
14 EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS
15 SECTION, THE COMMISSIONER SHALL FILE A COMPLAINT TO ENJOIN THE
16 VIOLATION, TO REINSTATE THE EMPLOYEE TO THE FORMER POSITION WITH
17 BACK PAY, AND TO AWARD ANY OTHER APPROPRIATE DAMAGES OR OTHER
18 RELIEF IN THE CIRCUIT COURT FOR:

19 (I) THE COUNTY IN WHICH THE ALLEGED VIOLATION
20 OCCURRED;

21 (II) THE COUNTY IN WHICH THE EMPLOYER HAS ITS
22 PRINCIPAL OFFICE; OR

23 (III) BALTIMORE CITY.

24 (4) WITHIN 120 DAYS AFTER THE COMMISSIONER RECEIVES A
25 COMPLAINT, THE COMMISSIONER SHALL NOTIFY THE EMPLOYEE OF THE
26 DETERMINATION UNDER THIS SUBSECTION.

27 **3-913.**

28 (A) WHERE, AFTER INVESTIGATION, THE COMMISSIONER ISSUES A
29 CITATION FOR A VIOLATION OF THIS SUBTITLE OR REGULATIONS ADOPTED
30 UNDER THIS SUBTITLE BY AN EMPLOYER ENGAGED IN WORK ON A CONTRACT
31 WITH A PUBLIC BODY, THE COMMISSIONER SHALL PROMPTLY NOTIFY THE
32 PUBLIC BODY.

1 (B) (1) ON NOTIFICATION, THE PUBLIC BODY SHALL WITHHOLD
2 FROM PAYMENT DUE THE EMPLOYER AN AMOUNT THAT IS SUFFICIENT TO:

3 (I) PAY RESTITUTION TO EACH EMPLOYEE FOR THE FULL
4 AMOUNT OF WAGES DUE; AND

5 (II) PAY ANY BENEFITS, TAXES, OR OTHER CONTRIBUTIONS
6 THAT ARE REQUIRED BY LAW TO BE PAID ON BEHALF OF THE EMPLOYEE.

7 (2) THE PUBLIC BODY SHALL RELEASE:

8 (I) ON ISSUANCE OF A FAVORABLE FINAL ORDER OF A
9 COURT OR AN ADMINISTRATIVE UNIT, THE FULL AMOUNT OF THE WITHHELD
10 FUNDS; AND

11 (II) ON AN ADVERSE FINAL ORDER OF A COURT OR AN
12 ADMINISTRATIVE UNIT, THE BALANCE OF THE WITHHELD FUNDS AFTER ALL
13 OBLIGATIONS ARE SATISFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

14 ~~(C) (1) SUBJECT TO THE PROCESS SET FORTH IN THIS SUBSECTION,~~
15 ~~THE COMMISSIONER SHALL FILE WITH THE SECRETARY OF STATE, THE~~
16 ~~DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT OF GENERAL~~
17 ~~SERVICES, AND THE BOARD OF PUBLIC WORKS A LIST OF THE EMPLOYERS WHO~~
18 ~~ARE SUBJECT TO DEBARMENT.~~

19 ~~(2) AN EMPLOYER FOUND IN VIOLATION OF THIS SUBTITLE BY~~
20 ~~MORE THAN TWO FINAL ADMINISTRATIVE OR JUDICIAL ORDERS SHALL BE~~
21 ~~SUBJECT TO DEBARMENT.~~

22 ~~(3) WITHIN 15 DAYS AFTER AN EMPLOYER RECEIVES A FINAL~~
23 ~~ADMINISTRATIVE OR JUDICIAL ORDER FINDING A VIOLATION OF THIS~~
24 ~~SUBTITLE, WHICH TRIGGERS DEBARMENT UNDER THIS SUBSECTION, AN~~
25 ~~EMPLOYER MAY REQUEST A REVIEW BY THE SECRETARY OF WHETHER~~
26 ~~DEBARMENT IS WARRANTED.~~

27 ~~(4) AFTER REVIEW OF THE FINAL ORDERS TRIGGERING~~
28 ~~DEBARMENT, WITH OR WITHOUT A HEARING ON THE RECORD, THE SECRETARY~~
29 ~~SHALL ISSUE AN ORDER AS TO WHETHER THE EMPLOYER SHALL BE PLACED ON~~
30 ~~THE LIST OF EMPLOYERS FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

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

1 ~~(6) AN EMPLOYER THAT IS ON THE LIST SHALL BE PROHIBITED~~
2 ~~FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY DIRECTLY OR~~
3 ~~INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE EMPLOYER~~
4 ~~APPEARED ON THE LIST.~~

5 ~~(7) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN~~
6 ~~EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER THIS~~
7 ~~SUBSECTION.~~

8 ~~(8) THE LIST MAINTAINED IN ACCORDANCE WITH THIS~~
9 ~~SUBSECTION IS A PUBLIC RECORD.~~

10 ~~(9) A DEBARMENT UNDER THIS SECTION SHALL BE IN EFFECT~~
11 ~~AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT:~~

12 ~~(I) HAS ONE OR MORE OF THE SAME PRINCIPALS OR~~
13 ~~OFFICERS AS THE EMPLOYER AGAINST WHOM THE DEBARMENT WAS IMPOSED;~~
14 ~~AND~~

15 ~~(II) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR~~
16 ~~ACTIVITY.~~

17 **3-914.**

18 (A) AN EMPLOYER SHALL KEEP, FOR AT LEAST 3 YEARS, IN OR ABOUT
19 ITS PLACE OF BUSINESS, RECORDS OF THE EMPLOYER CONTAINING THE
20 FOLLOWING INFORMATION:

21 (1) THE NAME, ADDRESS, ~~AND~~ OCCUPATION, AND
22 CLASSIFICATION OF EACH EMPLOYEE OR INDEPENDENT CONTRACTOR;

23 (2) THE RATE OF PAY OF EACH EMPLOYEE OR METHOD OF
24 PAYMENT FOR THE INDEPENDENT CONTRACTOR;

25 ~~(3) THE CLASSIFICATION OF EACH INDIVIDUAL AS AN EMPLOYEE~~
26 ~~OR INDEPENDENT CONTRACTOR;~~

27 ~~(4)~~ (3) THE AMOUNT THAT IS PAID EACH PAY PERIOD TO EACH
28 EMPLOYEE OR, IF APPLICABLE, INDEPENDENT CONTRACTOR;

29 ~~(5)~~ (4) THE HOURS THAT EACH EMPLOYEE OR INDEPENDENT
30 CONTRACTOR WORKS EACH DAY AND EACH WORKWEEK;

1 ~~(6)~~ (5) FOR ALL INDIVIDUALS WHO ARE NOT CLASSIFIED AS
2 EMPLOYEES, EVIDENCE THAT EACH INDIVIDUAL IS ~~A SOLE PROPRIETOR~~ AN
3 EXEMPT PERSON OR AN INDEPENDENT CONTRACTOR OR ITS EMPLOYEE; AND

4 ~~(7)~~ (6) OTHER INFORMATION THAT THE COMMISSIONER
5 REQUIRES, BY REGULATION, AS NECESSARY TO ENFORCE THIS SUBTITLE.

6 (B) AN EMPLOYER SHALL PROVIDE EACH INDIVIDUAL CLASSIFIED AS
7 AN INDEPENDENT CONTRACTOR OR ~~SOLE PROPRIETOR~~ EXEMPT PERSON WITH
8 WRITTEN NOTICE OF THE CLASSIFICATION OF THE INDIVIDUAL AT THE TIME
9 THE INDIVIDUAL IS HIRED.

10 (C) THE WRITTEN NOTICE SHALL:

11 (1) INCLUDE AN EXPLANATION OF THE IMPLICATIONS OF THE
12 INDIVIDUAL'S CLASSIFICATION AS AN INDEPENDENT CONTRACTOR OR ~~SOLE~~
13 ~~PROPRIETOR~~ EXEMPT PERSON RATHER THAN AS AN EMPLOYEE; AND

14 (2) BE PROVIDED IN ENGLISH AND SPANISH.

15 (D) THE COMMISSIONER SHALL ADOPT REGULATIONS ESTABLISHING
16 THE SPECIFIC REQUIREMENTS FOR THE CONTENTS AND FORM OF THE NOTICE.

17 **3-915.**

18 (A) A PERSON MAY NOT KNOWINGLY INCORPORATE OR FORM, OR
19 ASSIST IN THE INCORPORATION OR FORMATION OF, A CORPORATION,
20 PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY, OR PAY
21 OR COLLECT A FEE FOR USE OF A FOREIGN OR DOMESTIC CORPORATION,
22 PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY FOR THE
23 PURPOSE OF FACILITATING, OR EVADING DETECTION OF, A VIOLATION OF THIS
24 SUBTITLE.

25 (B) A PERSON MAY NOT KNOWINGLY CONSPIRE WITH, AID AND ABET,
26 ASSIST, ADVISE, OR FACILITATE AN EMPLOYER WITH THE INTENT OF VIOLATING
27 THIS SUBTITLE.

28 (C) (1) A EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
29 SUBSECTION, A PERSON THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO A
30 CIVIL PENALTY NOT EXCEEDING \$20,000.

31 (2) A PERSON THAT VIOLATES THIS SECTION MAY NOT BE
32 SUBJECT TO A CIVIL PENALTY UNDER THIS SECTION IF THE PERSON:

1 **(I) HOLDS A PROFESSIONAL LICENSE AS A LAWYER OR A**
2 **CERTIFIED PUBLIC ACCOUNTANT; AND**

3 **(II) WAS PERFORMING AN ACTIVITY IN THE ORDINARY**
4 **COURSE OF THAT PERSON'S LICENSE WHEN THE VIOLATION OCCURRED.**

5 **(3) IF THE PERSON IS EXEMPT FROM SANCTION UNDER**
6 **PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER SHALL PROMPTLY**
7 **REFER THE PERSON FOR INVESTIGATION AND POSSIBLE SANCTION TO THE UNIT**
8 **OF STATE GOVERNMENT THAT HAS REGULATORY JURISDICTION OVER THE**
9 **BUSINESS ACTIVITIES OF THAT PERSON.**

10 **(D) THE PROCEDURES GOVERNING INVESTIGATIONS, CITATIONS, AND**
11 **ADMINISTRATIVE AND JUDICIAL REVIEW OF AN ALLEGED VIOLATION UNDER**
12 **THIS SECTION SHALL BE THE SAME AS THOSE SET FORTH IN §§ 3-905 AND 3-906**
13 **OF THIS SUBTITLE.**

14 **(E) A PERSON MAY BE ASSESSED CIVIL PENALTIES UNDER THIS**
15 **SECTION BY ONLY ONE FINAL ORDER OF A COURT OR ADMINISTRATIVE UNIT**
16 **FOR THE SAME ACTIONS CONSTITUTING THE VIOLATION.**

17 **3-916.**

18 **(A) A PERSON MAY NOT:**

19 **(1) MAKE OR CAUSE TO BE MADE A GROUNDLESS OR MALICIOUS**
20 **COMPLAINT TO THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF**
21 **THE COMMISSIONER;**

22 **(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE OR A**
23 **PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE; OR**

24 **(3) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE**
25 **OR A PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE.**

26 **(B) THE COMMISSIONER SHALL INVESTIGATE ANY ALLEGATIONS THAT**
27 **A PERSON HAS VIOLATED ANY PROVISION OF THIS SECTION.**

28 **(C) (1) IF THE COMMISSIONER DETERMINES THAT A PERSON HAS**
29 **VIOLATED ANY PROVISION OF THIS SECTION, THAT PERSON MAY BE SUBJECT TO**
30 **AN ADMINISTRATIVE PENALTY OF UP TO \$1,000, ASSESSED BY THE**
31 **COMMISSIONER.**

1 **(2) A SANCTION UNDER PARAGRAPH (1) OF THIS SUBSECTION**
2 **SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF § 3-906**
3 **OF THIS SUBTITLE.**

4 **(3) IF THE PERSON FOUND IN VIOLATION OF THIS SECTION IS A**
5 **PERSON ALLEGED TO BE EMPLOYED BY THE RESPONDENT, THE COMMISSIONER**
6 **SHALL DISCLOSE THE IDENTITY OF THE COMPLAINANT.**

7 **(D) ANY PERSON WHO MUST DEFEND AN ACTION TAKEN AS A RESULT OF**
8 **A GROUNDLESS OR MALICIOUS COMPLAINT MAY BE ENTITLED TO RECOVER**
9 **ATTORNEYS' FEES.**

10 ~~**3-916. 3-917.**~~

11 **THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT ~~THE~~**
12 **~~PROVISIONS OF THIS SUBTITLE.~~**

13 ~~**3-917. 3-918.**~~

14 **EACH CIVIL PENALTY UNDER THIS SUBTITLE SHALL BE PAID INTO THE**
15 **GENERAL FUND OF THE STATE.**

16 ~~**3-918. 3-919.**~~

17 **(A) THE PROPOSED BUDGET OF THE DIVISION OF LABOR AND**
18 **INDUSTRY SHALL INCLUDE AN APPROPRIATION FROM THE WORKERS'**
19 **COMPENSATION COMMISSION TO COVER THE COST OF ADMINISTERING THIS**
20 **SUBTITLE.**

21 **(B) THE WORKERS' COMPENSATION COMMISSION SHALL PAY THE**
22 **COST OF ADMINISTERING THIS SUBTITLE FROM MONEY THAT THE COMMISSION**
23 **RECEIVES UNDER § 9-316 OF THIS ARTICLE.**

24 ~~**3-919. 3-920.**~~

25 **(A) THE COMMISSIONER SHALL PREPARE AN ANNUAL REPORT FOR THE**
26 **SECRETARY ON THE ADMINISTRATION AND ENFORCEMENT OF THIS SUBTITLE,**
27 **THAT SHALL INCLUDE:**

28 **(1) THE NUMBER AND NATURE OF COMPLAINTS RECEIVED;**

29 **(2) THE NUMBER OF INVESTIGATIONS CONDUCTED;**

30 **(3) THE NUMBER OF CITATIONS ISSUED;**

1 (4) **THE NUMBER OF INFORMAL RESOLUTIONS OF THE CITATIONS;**

2 (5) **THE NUMBER OF FINAL ADMINISTRATIVE ORDERS, WITH A**
3 **DESCRIPTION, THAT SHALL INCLUDE:**

4 (I) **WHETHER THE ALLEGED VIOLATION WAS FOUND; AND**

5 (II) **WHETHER THE ORDER AFFIRMED OR OVERTURNED A**
6 **PROPOSED DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS;**

7 (6) **THE NUMBER OF ORDERS OF THE COMMISSIONER REVIEWED**
8 **BY THE SECRETARY AND WHETHER THEY WERE AFFIRMED OR OVERTURNED;**
9 **AND**

10 (7) **THE NUMBER OF REQUESTS FOR JUDICIAL REVIEW OF**
11 **ADMINISTRATIVE ORDERS AND WHETHER THE ORDERS WERE AFFIRMED OR**
12 **OVERTURNED.**

13 **(B) THE COMMISSIONER’S REPORT SHALL BE A PUBLIC RECORD.**

14 8–201.

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

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

19 (i) for wages; or

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

22 (2) the employment is performed in accordance with § 8–202 of this
23 subtitle.

24 **(B) TO OVERCOME THE PRESUMPTION OF EMPLOYMENT, AN**
25 **EMPLOYING UNIT SHALL ESTABLISH THAT THE PERSON PERFORMING SERVICES**
26 **IS AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH § 8–205 OF THIS**
27 **SUBTITLE OR IS SPECIFICALLY EXEMPTED UNDER THIS SUBTITLE.**

28 8–201.1.

1 (A) IN THIS SECTION, “KNOWINGLY” MEANS HAVING ACTUAL
 2 KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE
 3 TRUTH.

4 (B) AN EMPLOYER MAY NOT ~~MISCLASSIFY~~ FAIL TO PROPERLY CLASSIFY
 5 AN ~~EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN
 6 EMPLOYEE.

7 (C) (1) ~~WHERE~~ IF THE SECRETARY DETERMINES THAT AN
 8 EMPLOYING UNIT HAS ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN
 9 ~~EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN EMPLOYEE,
 10 ANY AND ALL CONTRIBUTION OR REIMBURSEMENT PAYMENTS RESULTING
 11 FROM THE ~~MISCLASSIFICATION~~ FAILURE TO PROPERLY CLASSIFY THAT ARE
 12 DUE AND UNPAID SHALL ACCRUE INTEREST ~~AT THE RATE OF 2% PER MONTH OR~~
 13 ~~PART OF A MONTH FROM THE FIRST DUE DATE FOLLOWING NOTICE OF THE~~
 14 ~~MISCLASSIFICATION UNTIL THE SECRETARY RECEIVES THE CONTRIBUTION OR~~
 15 ~~PAYMENT IN LIEU OF CONTRIBUTIONS AND INTEREST~~ AS PROVIDED IN
 16 PARAGRAPH (2) OF THIS SUBSECTION.

17 (2) AN EMPLOYER WHO FAILS TO PAY THE CONTRIBUTION OR
 18 REIMBURSEMENT PAYMENTS WITHIN 45 DAYS SHALL BE ASSESSED INTEREST AT
 19 THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE FIRST DUE DATE
 20 FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE SECRETARY
 21 RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF CONTRIBUTIONS AND
 22 INTEREST.

23 (D) THE SECRETARY SHALL CONSIDER, AS STRONG EVIDENCE THAT AN
 24 EMPLOYER DID NOT KNOWINGLY FAIL TO PROPERLY CLASSIFY AN INDIVIDUAL,
 25 WHETHER THE EMPLOYER:

26 (1) (I) CLASSIFIES ALL WORKERS WHO PERFORM THE SAME OR
 27 SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER AS INDEPENDENT
 28 CONTRACTORS; AND

29 (II) REPORTS THE INCOME OF THE WORKERS TO THE
 30 INTERNAL REVENUE SERVICE AS REQUIRED BY FEDERAL LAW; AND

31 (2) HAS RECEIVED A DETERMINATION FROM THE INTERNAL
 32 REVENUE SERVICE THAT THE INDIVIDUAL OR A WORKER WHO PERFORMS THE
 33 SAME OR SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER IS AN
 34 INDEPENDENT CONTRACTOR.

35 ~~(D)~~ (E) ~~WHERE~~ IF THE SECRETARY DETERMINES THAT AN
 36 EMPLOYING UNIT HAS KNOWINGLY ~~MISCLASSIFIED~~ FAILED TO PROPERLY

1 ~~CLASSIFY AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN
2 EMPLOYEE, THE EMPLOYING UNIT SHALL BE SUBJECT TO A CIVIL PENALTY OF
3 NOT MORE THAN \$5,000 PER EMPLOYEE.

4 ~~(E)~~ (F) (1) A PERSON MAY NOT KNOWINGLY ADVISE AN EMPLOYING
5 UNIT OR A PROSPECTIVE EMPLOYING UNIT TO TAKE ACTION FOR THE
6 PURPOSES OF VIOLATING THIS SECTION.

7 (2) A PERSON FOUND IN VIOLATION OF THIS SUBSECTION SHALL
8 BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$20,000.

9 ~~(F)~~ (G) AN EMPLOYING UNIT FOUND TO HAVE KNOWINGLY VIOLATED
10 THIS SECTION WHO HAS ALSO BEEN FOUND PREVIOUSLY TO HAVE KNOWINGLY
11 VIOLATED THIS SECTION BY A FINAL ORDER OF A COURT OR ADMINISTRATIVE
12 UNIT MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH
13 IN SUBSECTION (D) OF THIS SECTION FOR THE NEW VIOLATION.

14 ~~(G)~~ (H) (1) AN EMPLOYING UNIT MAY BE ASSESSED CIVIL
15 PENALTIES BY ONLY ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR
16 THE SAME ACTIONS CONSTITUTING A KNOWING ~~MISCLASSIFICATION~~ FAILURE
17 TO PROPERLY CLASSIFY ~~OF AN INDIVIDUAL AS AN EMPLOYEE~~.

18 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
19 EMPLOYING UNIT MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST
20 DUE, AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS
21 BY ORDERS OF A COURT, THE SECRETARY, AND ALL OTHER RELEVANT
22 ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE WORKERS'
23 COMPENSATION COMMISSION, THE INSURANCE ADMINISTRATION, AND THE
24 DIVISION OF LABOR AND INDUSTRY.

25 ~~(H)~~ (I) ~~WHERE~~ IF THE SECRETARY DETERMINES THAT AN
26 EMPLOYING UNIT HAS ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN
27 INDIVIDUAL AS AN EMPLOYEE, THE SECRETARY SHALL PROMPTLY NOTIFY THE
28 WORKERS' COMPENSATION COMMISSION, THE DIVISION OF LABOR AND
29 INDUSTRY, THE INSURANCE ADMINISTRATION, AND THE COMPTROLLER.

30 ~~(I)~~ (J) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN
31 THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE
32 DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE
33 COMPTROLLER, THE INSURANCE ADMINISTRATION, AND OTHER STATE
34 AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING ANY
35 SUSPECTED VIOLATION OF THIS TITLE.

1 ~~(J)~~ **(K)** **(1)** **THE SECRETARY ~~MAY~~ SHALL ADOPT REGULATIONS TO**
2 **CARRY OUT THIS SECTION.**

3 **(2)** **THE REGULATIONS SHALL:**

4 **(I)** **REQUIRE THAT THE SECRETARY PROVIDE AN**
5 **EMPLOYER WITH THE FACTUAL BASIS FOR ANY VIOLATIONS CHARGED;**

6 **(II)** **ESTABLISH PROCEDURES REGARDING THE AUDIT**
7 **PROCESS AND ANY AGENCY LEVEL REVIEW AVAILABLE BEFORE APPEAL; AND**

8 **(III)** **PROVIDE GUIDANCE AS TO WHAT CONSTITUTES THE**
9 **EVIDENCE RELEVANT TO THE DETERMINATION OF WHETHER AN EMPLOYER**
10 **KNOWINGLY FAILED TO PROPERLY CLASSIFY *AN INDIVIDUAL AS AN EMPLOYEE.***

11 8-205.

12 **(A)** **Work that an individual performs under any contract of hire is not**
13 **covered employment if the Secretary is satisfied that:**

14 **(1)** **the individual who performs the work is free from control and**
15 **direction over its performance both in fact and under the contract;**

16 **(2)** **the individual customarily is engaged in an independent business**
17 **or occupation of the same nature as that involved in the work; and**

18 **(3)** **the work is:**

19 **(i)** **outside of the usual course of business of the person for**
20 **whom the work is performed; or**

21 **(ii)** **performed outside of any place of business of the person for**
22 **whom the work is performed.**

23 **(B)** **THE SECRETARY SHALL ADOPT REGULATIONS TO PROVIDE:**

24 **(1)** **GENERAL GUIDANCE ABOUT THE APPLICATION OF**
25 **SUBSECTION (A) OF THIS SECTION; AND**

26 **(2)** **SPECIFIC EXAMPLES OF HOW SUBSECTION (A) OF THIS**
27 **SECTION IS APPLIED TO CERTAIN INDUSTRIES, INCLUDING THE CONSTRUCTION**
28 **INDUSTRY, THE LANDSCAPING INDUSTRY, AND THE HOME CARE SERVICES**
29 **INDUSTRY.**

30 8-610.1.

1 AN EMPLOYING UNIT THAT HAS KNOWINGLY FAILED TO PROPERLY
2 CLASSIFY AN ~~EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN
3 EMPLOYEE UNDER § 8-201.1 OF THIS TITLE SHALL PAY CONTRIBUTIONS FOR 2
4 YEARS:

5 (1) AT A RATE APPLIED TO THE TAXABLE WAGE BASE THAT
6 WOULD HAVE BEEN ASSIGNED TO THE EMPLOYING UNIT UNDER THIS SUBTITLE
7 IF THE EMPLOYING UNIT HAD NOT KNOWINGLY FAILED TO PROPERLY CLASSIFY
8 AN ~~EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN
9 EMPLOYEE; PLUS

10 (2) TWO PERCENTAGE POINTS.

11 8-628.

12 [A] EXCEPT AS PROVIDED IN § 8-201.1 OF THIS TITLE, A contribution or
13 reimbursement payment that is due and unpaid shall accrue interest at the rate of
14 1.5% per month or part of a month from the date on which it is due until the Secretary
15 receives the contribution or payment in lieu of contributions and the interest.

16 9-202.

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

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

22 (c) TO OVERCOME THE PRESUMPTION OF COVERED EMPLOYMENT, AN
23 EMPLOYER SHALL ESTABLISH THAT THE INDIVIDUAL PERFORMING SERVICES IS
24 AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH THE COMMON LAW OR IS
25 SPECIFICALLY EXEMPTED FROM COVERED EMPLOYMENT UNDER THIS
26 SUBTITLE.

27 9-315.1.

28 THE COMMISSION SHALL PAY THE COSTS OF THE ADMINISTRATION OF
29 THE WORKFORCE FRAUD PROGRAM BY THE COMMISSIONER OF LABOR AND
30 INDUSTRY UNDER TITLE 3, SUBTITLE 9 OF THIS ARTICLE.

31 9-316.

1 (b) Out of money appropriated for the maintenance of the Commission, the
 2 State shall pay the salaries, administrative expenses, and all other expenses of the
 3 Commission, including:

4 (1) the costs of the administration of the Occupational Safety and
 5 Health Program by the Commissioner of Labor and Industry under Title 5 of this
 6 article; [and]

7 (2) THE COSTS OF THE ADMINISTRATION OF THE WORKFORCE
 8 FRAUD PROGRAM BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER
 9 TITLE 3, SUBTITLE 9 OF THIS ARTICLE; AND

10 [~~(2)~~] (3) any cost incurred by the State, including contribution as an
 11 employer, because of the participation of a Commissioner in the Judges' Retirement
 12 System of the State of Maryland.

13 **9-402.1.**

14 (A) IN THIS SECTION, "KNOWINGLY" MEANS HAVING ACTUAL
 15 KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE
 16 TRUTH.

17 (B) AN EMPLOYER MAY NOT ~~MISCLASSIFY~~ FAIL TO PROPERLY CLASSIFY
 18 AN ~~EMPLOYEE AS AN INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN
 19 EMPLOYEE.

20 (C) IF THE COMMISSION DETERMINES THAT AN EMPLOYER
 21 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN ~~EMPLOYEE AS AN~~
 22 ~~INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN EMPLOYEE, THE COMMISSION
 23 SHALL ORDER THE EMPLOYER TO SECURE COMPENSATION FOR THE COVERED
 24 EMPLOYEE IN ACCORDANCE WITH § 9-407 OF THIS SUBTITLE.

25 (D) IF THE COMMISSION DETERMINES THAT AN EMPLOYER KNOWINGLY
 26 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN ~~EMPLOYEE AS AN~~
 27 ~~INDEPENDENT CONTRACTOR~~ INDIVIDUAL AS AN EMPLOYEE, THE COMMISSION
 28 SHALL, IN CONFORMANCE WITH § 9-310 OF THIS TITLE, ASSESS A CIVIL
 29 PENALTY OF NOT MORE THAN \$5,000.

30 (E) (1) A PERSON MAY NOT KNOWINGLY ADVISE AN EMPLOYER TO
 31 TAKE ACTION FOR THE PURPOSE OF VIOLATING THIS SECTION.

32 (2) A PERSON FOUND IN VIOLATION OF THIS SUBSECTION SHALL
 33 BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$20,000.

1 (F) AN EMPLOYER FOUND TO HAVE KNOWINGLY VIOLATED THIS
2 SECTION WHO HAS ALSO BEEN FOUND PREVIOUSLY TO HAVE KNOWINGLY
3 VIOLATED THIS SECTION BY A FINAL ORDER OF A COURT OR ADMINISTRATIVE
4 UNIT MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH
5 IN SUBSECTION (D) OF THIS SECTION FOR THE NEW VIOLATION.

6 (G) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES BY ONLY
7 ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME ACTIONS
8 CONSTITUTING A KNOWING ~~MISCLASSIFICATION OF~~ FAILURE TO PROPERLY
9 CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE.

10 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
11 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,
12 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
13 ORDERS OF A COURT, THE COMMISSION, AND ALL OTHER RELEVANT
14 ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF
15 UNEMPLOYMENT INSURANCE, THE INSURANCE ADMINISTRATION, AND THE
16 DIVISION OF LABOR AND INDUSTRY.

17 (H) ~~WHERE~~ IF THE COMMISSION DETERMINES THAT AN EMPLOYER HAS
18 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
19 EMPLOYEE, THE COMMISSION SHALL PROMPTLY NOTIFY THE OFFICE OF
20 UNEMPLOYMENT INSURANCE, THE DIVISION OF LABOR AND INDUSTRY, THE
21 INSURER, IF ANY, THE INSURANCE ADMINISTRATION, AND THE COMPTROLLER.

22 (I) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE
23 DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE
24 DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE
25 COMPTROLLER, THE INSURANCE ADMINISTRATION AND OTHER STATE
26 AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING ANY
27 SUSPECTED VIOLATION OF THIS TITLE.

28 (J) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS
29 SECTION.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall
31 include in the annual budget for each fiscal year beginning with fiscal year 2011 funds
32 as necessary for the effective administration and enforcement of this Act.

33 SECTION 3. AND BE IT FURTHER ENACTED, That the Commissioner of
34 Labor and Industry shall report to the Governor and, in accordance with § 2-1246 of
35 the State Government Article, the General Assembly on the Commissioner's
36 investigations of complaints of violations of this Act and the outcomes of those
37 investigations including any recommendations by the Commissioner to improve the

1 administration and enforcement of this Act, as well as any other information that the
2 Commissioner determines relevant.

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

9 SECTION 5. AND BE IT FURTHER ENACTED, That, notwithstanding
10 § 10-111(b) of the State Government Article, regulations proposed to implement this
11 Act may not be proposed as emergency regulations.

12 SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of
Delegates.