

## CHAPTER 188

(Senate Bill 909)

AN ACT concerning

### Workplace Fraud Act of 2009

FOR the purpose of prohibiting certain employers from failing to properly classify individuals who perform work for remuneration paid by the employer; authorizing the Commissioner of Labor and Industry to initiate an investigation under certain circumstances to determine whether certain violations occurred; requiring the Commissioner to enforce certain provisions; establishing the method of determining whether an employer–employee relationship exists for purposes of proper classification under certain circumstances; establishing certain presumptions and evidentiary considerations; prohibiting certain employers from knowingly failing to properly classify individuals who perform work for remuneration paid by the employer; providing certain criteria to be used to determine whether a violation is knowing; requiring the Commissioner to make certain investigations; providing for the confidentiality of certain complaints or statements; authorizing the Commissioner to enter a place of business or work site under certain circumstances and to require certain employers to take certain actions; authorizing the Commissioner to issue a subpoena under certain circumstances and to file a complaint in circuit court under certain circumstances; requiring the Commissioner to issue a citation under certain circumstances; requiring the Commissioner to grant an employer’s request for a hearing conducted by the Office of Administrative Hearings to contest a citation; requiring the Commissioner to disclose certain evidence and information under certain circumstances; providing that the Commissioner has the burden of proof under certain circumstances; authorizing certain judicial review and appeals under certain circumstances; providing for certain penalties for certain violations of this Act; requiring an employer to come into compliance with certain laws; providing that the requirement for compliance with certain laws after certain violations may include requiring an employer to enter into a certain agreement with a certain governmental unit within a certain time period; limiting the time period for which certain payments may be required for compliance with certain laws after certain violations; requiring the court or an administrative unit to award restitution under certain circumstances; authorizing the court or an administrative unit to award other damages under certain circumstances; requiring the Commissioner to provide notice of potential violations of this Act to the Workers’ Compensation Commission, the Office of Unemployment Insurance, the Insurance Administration, and the Comptroller’s Office under certain circumstances; requiring cooperation under this Act by certain units of State government; authorizing certain individuals who have not been properly

classified as employees to bring a civil action for damages against an employer under certain circumstances; requiring that a civil action be filed within a certain time period; requiring a court to award an individual or class of individuals certain costs and relief under certain circumstances; prohibiting an employer from discriminating against a person under certain circumstances; prohibiting a person from making certain complaints to the Commissioner; authorizing certain individuals to submit certain complaints alleging discrimination; authorizing the Commissioner to investigate certain complaints and file certain complaints in certain circuit courts; requiring the Commissioner to notify a public body of a citation issued for certain violations by an employer; requiring the public body, on notification, to withhold payment to an employer in a certain amount; ~~requiring the Commissioner to file with the Secretary of State, the Department of Budget and Management, and the Department of General Services a list of certain violators of this Act; authorizing an employer to request a review by the Secretary of Labor, Licensing, and Regulation of the decision to place the employer on the list; prohibiting certain employers from entering into a contract with a public body under certain circumstances;~~ requiring certain employers to retain certain records for a certain period of time; requiring certain employers to provide certain individuals notice of their status and classification; prohibiting a person from incorporating or assisting in the incorporation of certain entities for the purposes of facilitating or evading detection of a violation of this Act; prohibiting certain persons from conspiring with, aiding and abetting, assisting, advising, or facilitating another person with violating this Act; establishing certain civil and administrative penalties under this Act and other laws under the jurisdiction of the Commissioner; prohibiting a person from taking certain actions maliciously or in bad faith; authorizing recovery of attorneys' fees under certain circumstances; requiring certain penalties to be paid into the General Fund of the State; requiring the Commissioner to prepare certain reports; requiring the Commissioner to adopt regulations to carry out certain provisions of this Act; establishing certain unemployment insurance penalties for employers that ~~misclassify~~ fail to properly classify individuals as employees in violation of this Act; authorizing the Secretary of Labor, Licensing, and Regulation to adopt certain regulations; creating certain presumptions under the unemployment insurance law and workers' compensation law; requiring the Secretary of Labor, Licensing, and Regulation to consider certain evidence that an employer did not knowingly fail to properly classify an individual; requiring an employing unit that has knowingly failed to properly classify an employee as an independent contractor individual as an employee to pay at a certain rate certain unemployment insurance contributions; prohibiting an employer from ~~misclassifying~~ failing to properly classify an individual as an employee ~~as an independent contractor~~ for purposes of workers' compensation; requiring the Workers' Compensation Commission to pay certain costs; authorizing the Workers' Compensation Commission to order certain remedies if an employer ~~misclassifies~~ fails to properly classify an individual as an employee; authorizing the Workers' Compensation Commission to adopt certain regulations; defining certain terms;

providing for certain funding; making certain provisions of this Act severable; prohibiting the proposal of emergency regulations under this Act as emergency regulations; and generally relating to the failure to properly classify an individual as an employee.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 2–107(g), 3–102(a), 3–103, 3–104, 8–201, 8–205, 8–628, 9–202, and 9–316(b)

Annotated Code of Maryland  
(2008 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Labor and Employment

Section 3–101

Annotated Code of Maryland  
(2008 Replacement Volume)

~~BY repealing and reenacting, with amendments,~~

~~Article – Labor and Employment~~

~~Section 3–102(a), 3–103, 3–104, 8–201, 8–628, and 9–202~~

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

BY adding to

Article – Labor and Employment

Section 3–901 through ~~3–919~~ 3–920 to be under the new subtitle “Subtitle 9. Workplace Fraud”; 8–201.1, 8–610.1, 9–315.1, and 9–402.1

Annotated Code of Maryland  
(2008 Replacement Volume)

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

### **Article – Labor and Employment**

2–107.

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

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

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

## 3-101.

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

## 3-102.

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

## 3-103.

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

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

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

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

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

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

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

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

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

3-104.

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

**SUBTITLE 9. WORKPLACE FRAUD.**

**3-901.**

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

**(B) "CONSTRUCTION SERVICES" INCLUDES THE FOLLOWING SERVICES PROVIDED IN CONNECTION WITH REAL PROPERTY:**

**(1) BUILDING;**

**(2) RECONSTRUCTING;**

**(3) IMPROVING;**

**(4) ENLARGING;**

**(5) PAINTING ~~AND DECORATING~~;**

**(6) ALTERING;**

**(7) MAINTAINING; AND**

**(8) REPAIRING.**

(C) **“EMPLOYER” MEANS ANY PERSON THAT EMPLOYS AN INDIVIDUAL IN THE STATE.**

(D) **“EXEMPT PERSON” MEANS AN INDIVIDUAL WHO:**

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

**(I) A SPOUSE OF THE EXEMPT PERSON;**

**(II) CHILDREN OF THE EXEMPT PERSON; OR**

**(III) PARENTS OF THE EXEMPT PERSON;**

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

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

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

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

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

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

**(II) FOR WHICH:**

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

**2. IF THE BUSINESS IS ORGANIZED AS A CORPORATE ENTITY AND THE INDIVIDUAL OTHERWISE QUALIFIES AS AN EXEMPT PERSON**

UNDER THIS SUBSECTION, THE INDIVIDUAL FILES A SEPARATE FEDERAL INFORMATIONAL TAX RETURN FOR THE ENTITY AS REQUIRED BY LAW;

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

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

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

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

- (1) GARDEN MAINTENANCE AND PLANTING;
- (2) LAWN CARE INCLUDING FERTILIZING, MOWING, MULCHING, SEEDING, AND SPRAYING;
- (3) SEEDING AND MOWING OF HIGHWAY STRIPS;
- (4) SOD LAYING;
- (5) TURF INSTALLATION, EXCEPT ARTIFICIAL;
- (6) ORNAMENTAL BUSH PLANTING, PRUNING, BRACING, SPRAYING, AND REMOVAL; AND
- (7) ORNAMENTAL TREE PLANTING, PRUNING, BRACING, SPRAYING, AND REMOVAL.

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

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

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

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

- (1) THE STATE;**
- (2) A UNIT OF STATE GOVERNMENT OR AN INSTRUMENTALITY OF THE STATE; OR**
- (3) ANY POLITICAL SUBDIVISION, AGENCY, PERSON, OR ENTITY THAT IS A PARTY TO A CONTRACT FOR WHICH 50% OR MORE OF THE MONEY USED IS STATE MONEY.**

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

- ~~**(1) PERFORMS SERVICES IN A PERSONAL CAPACITY AND EMPLOYS NO OTHER INDIVIDUALS;**~~
- ~~**(2) PERFORMS SERVICES FREE FROM THE DIRECTION AND CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE, SUBJECT ONLY TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES ARE PROVIDED TO SPECIFY THE DESIRED RESULT;**~~
- ~~**(3) FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO PROVIDE THE SERVICE;**~~
- ~~**(4) OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES IN WHICH THE INDIVIDUAL:**~~
  - ~~**(I) HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR ALL OF THE DEBTS AND LIABILITIES OF THE BUSINESS;**~~
  - ~~**(II) DOES NOT PAY TAXES FOR THE BUSINESS SEPARATELY, BUT REPORTS BUSINESS INCOME AND LOSSES ON THE INDIVIDUAL'S PERSONAL TAX RETURN; AND**~~
  - ~~**(III) OWNS ALL OF THE ASSETS AND PROFITS OF THE BUSINESS;**~~
- ~~**(5) EXERCISES COMPLETE CONTROL OVER THE MANAGEMENT AND OPERATIONS OF THE BUSINESS; AND**~~

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

**3-902.**

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

- (1) CONSTRUCTION SERVICES; AND**
- (2) LANDSCAPING SERVICES; AND**
- ~~(3) PACKAGE DELIVERY SERVICES.~~**

**3-903.**

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

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

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

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

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

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

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

**3. THE WORK IS:**

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

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

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

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

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

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

**(3) BY CONTRACT, AN EMPLOYER MAY ENGAGE ANOTHER BUSINESS ENTITY, WHICH MAY HAVE ITS OWN EMPLOYEES, TO DO THE SAME TYPE OF WORK IN WHICH THE EMPLOYER ENGAGES, AT THE SAME LOCATION WHERE THE EMPLOYER IS WORKING, WITHOUT ESTABLISHING AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE TWO CONTRACTING ENTITIES.**

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

**3-904.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) SOUGHT AND OBTAINED EVIDENCE THAT THE INDIVIDUAL:

1. IS AN EXEMPT PERSON; OR

**2. AS AN INDEPENDENT CONTRACTOR:**

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

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

**C. MAINTAINS WORKERS' COMPENSATION INSURANCE; AND**

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

**(2) THE EMPLOYER:**

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

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

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

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

**3-905.**

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

**(B) (1) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY ~~AN INDIVIDUAL~~ A PERSON AS PART OF AN INVESTIGATION UNDER THIS SECTION**

**IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE CONSENT OF THE INDIVIDUAL PERSON UNTIL THE INVESTIGATION IS CONCLUDED AND A CITATION IS ISSUED.**

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

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

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

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

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

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

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

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

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

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

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

**(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER THIS SUBSECTION, THE COMMISSIONER MAY FILE A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE PERSON RESIDES, IS EMPLOYED,**

**OR HAS A PLACE OF BUSINESS, REQUESTING AN ORDER DIRECTING COMPLIANCE WITH THE SUBPOENA.**

**3-906.**

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

**(B) EACH CITATION SHALL:**

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

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

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

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

**(1) A COPY OF THE CITATION; AND**

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

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

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

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

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

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

~~(G) (1) A PROPOSED DECISION OF AN ADMINISTRATIVE LAW JUDGE ISSUED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE SHALL BECOME A FINAL ORDER OF THE COMMISSIONER UNLESS, WITHIN 15 DAYS OF THE ISSUANCE OF THE PROPOSED DECISION:~~

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

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

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

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

3-907.

(A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT AN EMPLOYER FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE IN VIOLATION OF § 3-903 OF THIS SUBTITLE, OR KNOWINGLY FAILED TO PROPERLY CLASSIFY AS AN EMPLOYEE AN EMPLOYEE IN VIOLATION OF § 3-904 OF THIS SUBTITLE, AND ISSUES A CITATION, THE COMMISSIONER SHALL NOTIFY THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION

COMMISSION TO ENABLE THESE AGENCIES TO ASSURE AN EMPLOYER'S COMPLIANCE WITH THEIR LAWS, UTILIZING THEIR OWN DEFINITIONS, STANDARDS, AND PROCEDURES.

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

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

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

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

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

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

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

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

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

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

**3-908.**

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

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

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

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

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE, AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY MULTIPLE FINAL ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION COMMISSION.

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

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

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

**3-909.**

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

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

- (1) THE GRAVITY OF THE VIOLATION;
- (2) THE SIZE OF THE EMPLOYER'S BUSINESS;
- (3) THE EMPLOYER'S GOOD FAITH;
- (4) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS SUBTITLE; AND

(5) WHETHER THE EMPLOYER:

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

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

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

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

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

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

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

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

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

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

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

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE, AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION COMMISSION.

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

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

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

**3-910.**

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

**3-911.**

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

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

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

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

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

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

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

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

- (4) ANY OTHER APPROPRIATE RELIEF.

**3-912.**

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

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

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

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

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

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

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

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

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

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

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

(3) IF, AFTER INVESTIGATION AND CONSIDERATION OF ANY RESPONSE FROM THE EMPLOYER, THE COMMISSIONER DETERMINES THAT AN EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS

**SECTION, THE COMMISSIONER SHALL FILE A COMPLAINT TO ENJOIN THE VIOLATION, TO REINSTATE THE EMPLOYEE TO THE FORMER POSITION WITH BACK PAY, AND TO AWARD ANY OTHER APPROPRIATE DAMAGES OR OTHER RELIEF IN THE CIRCUIT COURT FOR:**

**(I) THE COUNTY IN WHICH THE ALLEGED VIOLATION OCCURRED;**

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

**(III) BALTIMORE CITY.**

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

**3-913.**

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

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

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

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

**(2) THE PUBLIC BODY SHALL RELEASE:**

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

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

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

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

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

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

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

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

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

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

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

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

~~(H) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR ACTIVITY.~~

**3-914.**

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

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

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

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

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

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

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

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

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

(C) THE WRITTEN NOTICE SHALL:

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

(2) BE PROVIDED IN ENGLISH AND SPANISH.

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

**3-915.**

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

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

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

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

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

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

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

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

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

**3-916.**

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

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

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

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

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

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

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

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

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

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

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

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

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

~~3-918.~~ 3-919.

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

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

~~3-919.~~ 3-920.

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

- (1) THE NUMBER AND NATURE OF COMPLAINTS RECEIVED;
- (2) THE NUMBER OF INVESTIGATIONS CONDUCTED;
- (3) THE NUMBER OF CITATIONS ISSUED;
- (4) THE NUMBER OF INFORMAL RESOLUTIONS OF THE CITATIONS;
- (5) THE NUMBER OF FINAL ADMINISTRATIVE ORDERS, WITH A DESCRIPTION, THAT SHALL INCLUDE:
  - (I) WHETHER THE ALLEGED VIOLATION WAS FOUND; AND
  - (II) WHETHER THE ORDER AFFIRMED OR OVERTURNED A PROPOSED DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS;
- (6) THE NUMBER OF ORDERS OF THE COMMISSIONER REVIEWED BY THE SECRETARY AND WHETHER THEY WERE AFFIRMED OR OVERTURNED; AND
- (7) THE NUMBER OF REQUESTS FOR JUDICIAL REVIEW OF ADMINISTRATIVE ORDERS AND WHETHER THE ORDERS WERE AFFIRMED OR OVERTURNED.

(B) THE COMMISSIONER'S REPORT SHALL BE A PUBLIC RECORD.

8-201.

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

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

(i) for wages; or

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

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

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

8-201.1.

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

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

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

**(2) AN EMPLOYER WHO FAILS TO PAY THE CONTRIBUTION OR REIMBURSEMENT PAYMENTS WITHIN 45 DAYS SHALL BE ASSESSED INTEREST AT**

THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE FIRST DUE DATE FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE SECRETARY RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF CONTRIBUTIONS AND INTEREST.

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

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

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

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

~~(D)~~ (E) WHERE IF THE SECRETARY DETERMINES THAT AN EMPLOYING UNIT HAS KNOWINGLY MISCLASSIFIED FAILED TO PROPERLY CLASSIFY AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR INDIVIDUAL AS AN EMPLOYEE, THE EMPLOYING UNIT SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$5,000 PER EMPLOYEE.

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

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

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

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

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

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

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

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

(2) THE REGULATIONS SHALL:

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

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

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

8-205.

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

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

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

(3) the work is:

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

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

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

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

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

**8-610.1.**

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

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

**(2) TWO PERCENTAGE POINTS.**

**8-628.**

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

**9-202.**

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

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

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

### **9-315.1.**

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

### **9-316.**

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

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

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

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

### **9-402.1.**

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

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

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

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

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

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

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

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

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

(H) ~~WHERE~~ IF THE COMMISSION DETERMINES THAT AN EMPLOYER HAS ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN

**EMPLOYEE, THE COMMISSION SHALL PROMPTLY NOTIFY THE OFFICE OF UNEMPLOYMENT INSURANCE, THE DIVISION OF LABOR AND INDUSTRY, THE INSURER, IF ANY, THE INSURANCE ADMINISTRATION, AND THE COMPTROLLER.**

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

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

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

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

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

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

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

**Approved by the Governor, May 7, 2009.**