

HB0819/163992/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 819

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 10, after “presumptions” insert “and evidentiary considerations”; and in line 15, after “business” insert “or work site”.

On page 2, in line 2, after “citation;” insert “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;”; in line 4, after “laws;” insert “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;”; strike beginning with “requiring” in line 20 down through “circumstances;” in line 25; in line 33, after “Commissioner;” insert “prohibiting a person from taking certain actions maliciously or in bad faith; authorizing recovery of attorneys’ fees under certain circumstances;”; and in line 42, after “compensation;” insert “requiring the Workers’ Compensation Commission to pay certain costs;”.

On page 3, in line 3, after “2-107(g)” insert “3-102(a), 3-103, 3-104, 8-201, 8-628, 9-202, and 9-316(b)”; strike in their entirety lines 11 through 15, inclusive; in line 18, strike “3-919” and substitute “3-920”; and in line 19, after “8-201.1” insert “, 9-315.1,”.

AMENDMENT NO. 2

On page 5, in line 17, strike “**AND DECORATING**”; after line 22, insert:

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

(Over)

(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.”;

and in lines 23 and 25, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively.

On page 6, strike in their entirety lines 11 through 14, inclusive, and substitute:

(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.”;

in line 15, strike “(G)” and substitute “(H)”; and in line 17, after “OR” insert “AN”.

(Over)

On pages 6 and 7, strike in their entirety the lines beginning with line 22 on page 6 through line 17 on page 7, inclusive.

On page 7, in line 20, after “**SERVICES;**” insert “**AND**”; and strike beginning with the semicolon in line 21 down through “**SERVICES**” in line 22.

On page 8, in line 5, strike “**A SOLE PROPRIETOR**” and substitute “**AN EXEMPT PERSON**”.

On page 19, in line 21, strike “**A SOLE PROPRIETOR**” and substitute “**AN EXEMPT PERSON**”; and in line 26, strike “**SOLE PROPRIETOR**” and substitute “**EXEMPT PERSON**”.

On page 20, strike beginning with “**SOLE**” in line 2 down through “**PROPRIETOR**” in line 3 and substitute “**EXEMPT PERSON**”; and in line 3, after “**THAN**” insert “**AS**”.

On page 10 in line 27 and on page 12 in line 27, in each instance, strike “**OF**” and substitute “**AFTER**”.

On page 14, strike beginning with “**THE**” in line 11 down through “**ARTICLE**” in line 12 and substitute “**THIS ARTICLE**”.

On page 14 in line 24, on page 17 in line 30, and on page 18 in line 1, in each instance, after “**OR**” insert “**AN**”.

On page 15, in line 24, strike the first “**OF**” and substitute “**AFTER**”.

On page 22 in lines 21 and 29, on page 23 in line 21, and on page 25 in line 14, in each instance, strike “**WHERE**” and substitute “**IF**”.

AMENDMENT NO. 3

On page 8, after line 26, insert:

“(3) BY CONTRACT, AN EMPLOYER MAY ENGAGE ANOTHER BUSINESS ENTITY, WHICH HAS 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.”

AMENDMENT NO. 4

On page 9, strike in their entirety lines 10 through 29, inclusive, and substitute:

“(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

(Over)

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.”.

On page 10, in line 1, strike “EMPLOYER’S FAILURE” and substitute “EMPLOYER KNOWINGLY FAILED”; and in line 2, strike “WAS KNOWING” and substitute “AN EMPLOYEE”.

AMENDMENT NO. 5

On page 10, in line 7, after “(B)” insert “(1)”; strike beginning with “AN” in line 7 down through “INDIVIDUAL” in line 8 and substitute “A PERSON”; in line 10, strike “INDIVIDUAL” and substitute “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”;

and in line 11, after “BUSINESS” insert “OR WORK SITE”.

AMENDMENT NO. 6

On page 11, in line 30, strike “PROPOSED”; in the same line, strike the second “AND” and substitute a comma; in line 31, strike “A PROPOSED” and substitute “AN”; in the same line, after “ORDER” insert “, AND ASSESS A PENALTY UNDER § 3-909 OF THIS SUBTITLE”; and after line 32, insert:

“(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.”.

On page 12, in line 1, strike “(G)” and substitute “(I)”; in the same line, strike “PROPOSED”; and strike beginning with “UNLESS,” in line 3 down through “DECISION” in line 13.

On page 12, after line 13, insert:

(Over)

“(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.”;

and in line 26, strike “**THE COMMISSIONER**” and substitute “**AN ADMINISTRATIVE UNIT**”.

On page 13, in line 33, after “**COMMISSIONER**” insert “**OR THE ADMINISTRATIVE LAW JUDGE**”.

AMENDMENT NO. 7

On page 12, in line 25, after “**(B)**” insert “**(1)**”; in the same line, strike “**OR § 3-904**”; in line 27, strike “**30**” and substitute “**45**”; in lines 28 and 30, strike “**(1)**” and “**(2)**”, respectively, and substitute “**(I)**” and “**(II)**”, respectively; and after line 33, insert:

“(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.

On page 13, in line 3, after "A" insert "CIVIL"; in line 4, after "(B)" insert "(1)"; in line 7, strike "\$3,000" and substitute "\$1,000"; after line 8, insert:

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

and in line 12, after "§ 3-907(B)" insert "AND (C)".

On page 14, after line 24, insert:

"(D) 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."

in line 25, strike “(D)” and substitute “(E)”; and in line 26, after “SECTION” insert “OR § 8-201.1 OR § 9-402.1 OF THIS ARTICLE”.

On page 15, in line 32, after “DAMAGES” insert “, IF THE EMPLOYER KNOWINGLY FAILED TO PROPERLY CLASSIFY THE INDIVIDUAL”.

AMENDMENT NO. 8

On page 3, in line 26, strike “§ 3-918” and substitute “§ 3-919”.

On page 16, strike in their entirety lines 14 through 18, inclusive; and in lines 19 and 26, strike “(C)” and “(D)”, respectively, and substitute “(B)” and “(C)”, respectively.

On page 20, after line 26, insert:

“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 MAY DISCLOSE THE IDENTITY OF THE COMPLAINANT.

(D) (1) ANY PERSON WHO MUST DEFEND AN ACTION TAKEN AS A RESULT OF A GROUNDLESS OR MALICIOUS COMPLAINT MAY BE ENTITLED TO RECOVER ATTORNEYS' FEES.

(2) ATTORNEYS' FEES MAY NOT BE ALLOWED IF THE COMPLAINANT IS A PERSON ALLEGED TO BE OR TO HAVE BEEN IN THE EMPLOY OF THE RESPONDENT.”;

in lines 27 and 30, strike “**3-916.**” and “**3-917.**”, respectively, and substitute “**3-917.**” and “**3-918.**”, respectively; and strike beginning with “**THE**” in line 28 down through “**OF**” in line 29.

On page 21, in lines 1 and 9, strike “**3-918.**” and “**3-919.**”, respectively, and substitute “**3-919.**” and “**3-920.**”, respectively.

(Over)

AMENDMENT NO. 9

On pages 18 and 19, strike the lines beginning with line 4 on page 18 through line 5 on page 19, inclusive.

AMENDMENT NO. 10

On page 19, in line 10, strike “AND”; in the same line, after “OCCUPATION” insert “, AND CLASSIFICATION”; in line 12, after “OR” insert “METHOD OF PAYMENT FOR THE”; strike in their entirety lines 14 and 15; in lines 16, 18, 20, and 23, strike “(4)”, “(5)”, “(6)”, and “(7)”, respectively, and substitute “(3)”, “(4)”, “(5)”, and “(6)”, respectively; and in line 17, after “OR” insert “, IF APPLICABLE,”.

AMENDMENT NO. 11

On page 20, in line 18, after “(C)” insert “(1)”; in the same line, strike “A” and substitute “EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A”; and after line 19, insert:

“(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.”.

AMENDMENT NO. 12

On page 24, after line 13, insert:

“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.”.