

HOUSE BILL 1070

K1, K2

9lr1542
CF SB 912

By: **Delegate Davis**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Misclassification of Employees as Independent**
3 **Contractors**

4 FOR the purpose of prohibiting certain employers from misclassifying employees as
5 independent contractors under certain circumstances; providing for the burden
6 of proof in certain proceedings; authorizing the Commissioner of Labor and
7 Industry to investigate alleged employee misclassification under certain
8 circumstances; providing for the construction of this Act; establishing certain
9 presumptions and procedures; requiring certain employers to keep certain
10 records; requiring employers to allow the Commissioner to inspect and copy
11 certain records; establishing certain penalties that may be imposed in certain
12 proceedings relating to employment standards and conditions, workers'
13 compensation, unemployment insurance, and income tax payment and
14 withholding; defining certain terms; and generally relating to employers
15 misclassifying employees as independent contractors.

16 BY adding to

17 Article – Labor and Employment
18 Section 3–103(e); and 3–901 through 3–905 to be under the new subtitle
19 “Subtitle 9. Misclassification of Employees”
20 Annotated Code of Maryland
21 (2008 Replacement Volume)

22 BY repealing and reenacting, with amendments,

23 Article – Labor and Employment
24 Section 8–630 and 9–407
25 Annotated Code of Maryland
26 (2008 Replacement Volume)

27 BY repealing and reenacting, with amendments,

28 Article – Tax–General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13-816
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2008 Supplement)

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

6 **Article - Labor and Employment**

7 3-103.

8 **(E) (1) THE COMMISSIONER MAY INVESTIGATE MISCLASSIFICATION**
9 **VIOLATIONS UNDER SUBTITLE 9 OF THIS TITLE:**

10 **(I) ON RECEIPT OF A WRITTEN AND SIGNED COMPLAINT; OR**

11 **(II) ON REFERRAL FROM ANOTHER UNIT OF STATE**
12 **GOVERNMENT.**

13 **(2) AFTER THE COMMISSIONER DETERMINES THAT AN**
14 **EMPLOYER HAS VIOLATED SUBTITLE 9 OF THIS TITLE:**

15 **(I) IF THE COMMISSIONER ALSO FINDS A VIOLATION OF**
16 **SUBTITLES 2 THROUGH 5 OF THIS TITLE, THE COMMISSIONER MAY SEEK A**
17 **CIVIL PENALTY AGAINST THE EMPLOYER IN THE MANNER PROVIDED IN §§ 3-902**
18 **AND 3-905 OF THIS TITLE; OR**

19 **(II) IF THE COMMISSIONER BELIEVES THAT THE EMPLOYER**
20 **HAS VIOLATED THE LAW, THE COMMISSIONER MAY NOTIFY THE SECRETARY OF**
21 **LABOR, LICENSING, AND REGULATION, THE STATE WORKERS' COMPENSATION**
22 **COMMISSION, OR THE STATE COMPTROLLER, IF THE VIOLATION RELATES TO:**

23 **1. UNEMPLOYMENT INSURANCE UNDER TITLE 8 OF**
24 **THIS ARTICLE;**

25 **2. WORKERS' COMPENSATION UNDER TITLE 9 OF**
26 **THIS ARTICLE; OR**

27 **3. TAX PAYMENTS FOR INCOME TAX UNDER TITLE**
28 **10, SUBTITLE 9 OF THE TAX - GENERAL ARTICLE.**

29 **SUBTITLE 9. MISCLASSIFICATION OF EMPLOYEES.**

30 **3-901.**

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

3 (B) "CONTRACTOR" MEANS A PERSON THAT PERFORMS WORK FOR
4 ANOTHER PERSON UNDER A CONTRACTUAL AGREEMENT THAT DOES NOT
5 ESTABLISH AN EMPLOYEE-EMPLOYER RELATIONSHIP.

6 (C) "EMPLOYER" MEANS A PERSON WHO EMPLOYS AT LEAST ONE
7 INDIVIDUAL WITHIN THE STATE.

8 (D) "SOLE PROPRIETOR" MEANS A BUSINESS IN WHICH ONE
9 INDIVIDUAL OWNS ALL THE ASSETS, OWES ALL THE LIABILITIES, AND OPERATES
10 THE BUSINESS IN THE INDIVIDUAL'S PERSONAL CAPACITY.

11 (E) "SUBCONTRACTOR" MEANS A PERSON OR SOLE PROPRIETOR
12 ENGAGED TO PERFORM SERVICES TO A THIRD PARTY UNDER A CONTRACT WITH
13 A CONTRACTOR.

14 (F) "TIERED SUBCONTRACTOR" MEANS A PERSON ENGAGED TO
15 PERFORM SERVICES TO ANOTHER PARTY, UNDER A CONTRACT WITH A
16 SUBCONTRACTOR.

17 **3-902.**

18 (A) A PERSON MAY NOT KNOWINGLY AND WILLFULLY DESIGNATE AN
19 EMPLOYEE AS AN INDEPENDENT CONTRACTOR FOR PURPOSES OF AVOIDING
20 THE PERSON'S OBLIGATIONS TO AN EMPLOYEE OR THE STATE CONCERNING:

21 (1) EMPLOYMENT STANDARDS AND CONDITIONS UNDER
22 SUBTITLES 2 THROUGH 8 OF THIS TITLE;

23 (2) UNEMPLOYMENT INSURANCE UNDER TITLE 8 OF THIS
24 ARTICLE;

25 (3) WORKERS' COMPENSATION UNDER TITLE 9 OF THIS ARTICLE;
26 AND

27 (4) INCOME TAX PAYMENTS UNDER TITLE 10, SUBTITLE 9 OF
28 THE TAX - GENERAL ARTICLE.

29 (B) THE STATE SHALL BEAR THE BURDEN OF PROVING A VIOLATION OF
30 SUBSECTION (A) OF THIS SECTION.

1 (C) (1) **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CIVIL**
2 **PENALTY NOT EXCEEDING \$3,000 MAY BE ASSESSED AND PAID INTO THE**
3 **GENERAL FUND OF THE STATE FOR EACH EMPLOYEE FOUND TO BE**
4 **MISCLASSIFIED IN VIOLATION OF THIS SECTION.**

5 (2) **IF AN EMPLOYER IS CHARGED WITH MORE THAN ONE**
6 **VIOLATION OF SUBSECTION (A) OF THIS SECTION, AND THE VIOLATION ARISES**
7 **FROM THE SAME FACTS AND THE SAME EMPLOYEES, THE PENALTY PROVIDED IN**
8 **PARAGRAPH (1) OF THIS SUBSECTION MAY BE IMPOSED IN ONLY ONE**
9 **PROCEEDING FOR WHICH A VIOLATION IS FOUND.**

10 **3-903.**

11 (A) **THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN**
12 **EMPLOYER FROM PRODUCING ANY RELEVANT EVIDENCE THAT AN INDIVIDUAL**
13 **IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE.**

14 (B) **THE PRESUMPTION PROVIDED IN THIS SECTION DOES NOT APPLY**
15 **IF:**

16 (1) **A PERSON HAS KNOWLEDGE THAT A SOLE PROPRIETOR,**
17 **SUBCONTRACTOR, OR TIERED SUBCONTRACTOR HAS PREVIOUSLY BEEN FOUND**
18 **TO HAVE VIOLATED § 3-902(A) OF THIS SUBTITLE WITHIN 1 YEAR OF THE DATE**
19 **OF ENGAGEMENT;**

20 (2) **THE ALLEGED SOLE PROPRIETOR WAS AN INDIVIDUAL**
21 **EMPLOYEE OF THE EMPLOYER WITHIN 180 DAYS BEFORE BEING ENGAGED AS A**
22 **SUBCONTRACTOR OR TIERED SUBCONTRACTOR BY THE EMPLOYER;**

23 (3) **AN EMPLOYER HAS FAILED TO COMPLY WITH THE RECORD**
24 **KEEPING REQUIREMENTS OF § 3-904 OF THIS SUBTITLE; OR**

25 (4) **IT IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT**
26 **THE SIGNATURE OF THE EMPLOYEE, SOLE PROPRIETOR, OR AGENT OF THE**
27 **SUBCONTRACTOR OR TIERED SUBCONTRACTOR WAS FRAUDULENTLY INDUCED**
28 **BY THE EMPLOYER OR THE EMPLOYER'S AGENT ON A CONTRACT AS PROVIDED**
29 **IN SUBSECTION (C) OF THIS SECTION.**

30 (C) **THERE IS A REBUTTABLE PRESUMPTION THAT MISCLASSIFICATION**
31 **OF AN EMPLOYEE UNDER § 3-902 OF THIS SUBTITLE DID NOT OCCUR IF AN**
32 **EMPLOYER ENTERS INTO A CONTRACT WITH AN INDIVIDUAL OR SOLE**
33 **PROPRIETOR TO PERFORM SERVICES THAT IS SIGNED BY THE EMPLOYER,**
34 **STATING:**

1 (1) A DESCRIPTION OF AND THE TERM OF THE SERVICES TO BE
2 PERFORMED BY THE INDIVIDUAL OR SOLE PROPRIETOR FOR THE EMPLOYER,
3 SUBCONTRACTOR, OR TIERED SUBCONTRACTOR;

4 (2) THE REMUNERATION TO BE PAID TO THE INDIVIDUAL OR SOLE
5 PROPRIETOR;

6 (3) THAT THE INDIVIDUAL OR SOLE PROPRIETOR UNDERSTANDS
7 THAT THE INDIVIDUAL OR SOLE PROPRIETOR IS AN INDEPENDENT
8 CONTRACTOR, NOT AN EMPLOYEE, FOR THE SERVICES TO BE PERFORMED AND
9 IS NOT ENTITLED TO:

10 (I) THE PROTECTIONS FOR EMPLOYMENT STANDARDS AND
11 CONDITIONS UNDER SUBTITLES 2 THROUGH 8 OF THIS TITLE;

12 (II) UNEMPLOYMENT INSURANCE TAX WITHHOLDINGS OR
13 BENEFITS UNDER TITLE 8 OF THIS ARTICLE;

14 (III) WORKERS' COMPENSATION OR CASUALTY INSURANCE
15 COVERAGE UNDER TITLE 9 OF THIS ARTICLE; AND

16 (IV) TAX PAYMENTS FOR INCOME TAX UNDER TITLE 10,
17 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE;

18 (4) THAT THE INDIVIDUAL OR SOLE PROPRIETOR IS
19 RESPONSIBLE FOR PAYING APPROPRIATE TAXES, INCLUDING FEDERAL INCOME
20 TAXES, STATE INCOME TAXES, AND ANY SELF-EMPLOYMENT TAXES;

21 (5) THAT THE EMPLOYER WILL NOT PROVIDE THE INDIVIDUAL OR
22 SOLE PROPRIETOR WITH ANY FRINGE BENEFITS;

23 (6) THAT THE INDIVIDUAL OR SOLE PROPRIETOR HAS OBTAINED
24 ANY NECESSARY BUSINESS LICENSE; AND

25 (7) THAT THE INDIVIDUAL OR SOLE PROPRIETOR IS ENTITLED TO
26 SEEK THE ADVICE OF AN ATTORNEY BEFORE ENTERING INTO THE CONTRACT
27 AND THAT THE INDIVIDUAL OR SOLE PROPRIETOR HAS OBTAINED THE ADVICE
28 OF AN ATTORNEY OR HAS WAIVED THE RIGHT TO OBTAIN THE ADVICE.

29 (D) THERE IS A REBUTTABLE PRESUMPTION THAT MISCLASSIFICATION
30 OF AN EMPLOYEE UNDER § 3-902 OF THIS SUBTITLE DID NOT OCCUR IF AN
31 EMPLOYER ENTERS INTO A CONTRACT WITH A SUBCONTRACTOR THAT IS
32 SIGNED BY BOTH THE EMPLOYER AND AN AUTHORIZED AGENT OF THE
33 SUBCONTRACTOR, STATING:

1 (1) A DESCRIPTION OF AND THE TERM OF THE SERVICES TO BE
2 PERFORMED BY THE SUBCONTRACTOR FOR THE EMPLOYER;

3 (2) THE REMUNERATION TO BE PAID TO THE SUBCONTRACTOR;

4 (3) THAT THE SUBCONTRACTOR UNDERSTANDS THAT IT IS AN
5 INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE, FOR THE SERVICES TO BE
6 PERFORMED AND THAT THE SUBCONTRACTOR IS NOT ENTITLED TO:

7 (I) THE PROTECTIONS FOR EMPLOYMENT STANDARDS AND
8 CONDITIONS UNDER SUBTITLES 2 THROUGH 8 OF THIS TITLE;

9 (II) UNEMPLOYMENT INSURANCE TAX WITHHOLDINGS OR
10 BENEFITS UNDER TITLE 8 OF THIS ARTICLE;

11 (III) WORKERS' COMPENSATION OR CASUALTY INSURANCE
12 COVERAGE UNDER TITLE 9 OF THIS ARTICLE; AND

13 (IV) TAX PAYMENTS FOR INCOME TAX UNDER TITLE 10,
14 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE;

15 (4) THAT THE SUBCONTRACTOR AGREES TO:

16 (I) PAY APPROPRIATE INCOME TAX UNDER TITLE 10,
17 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE OR ANY OTHER TAX THAT THE
18 SUBCONTRACTOR IS LEGALLY OBLIGATED TO PAY ON THE REMUNERATION
19 RECEIVED;

20 (II) WITHHOLD APPROPRIATE INCOME TAXES ON THE
21 INCOME PAID TO THE SUBCONTRACTOR'S EMPLOYEES UNDER TITLE 10,
22 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE;

23 (III) COMPLY WITH THE WAGE AND HOUR LAW UNDER TITLE
24 3 OF THIS ARTICLE;

25 (IV) PAY APPROPRIATE UNEMPLOYMENT INSURANCE TAXES
26 UNDER TITLE 8 OF THIS ARTICLE ON THE INCOME PAID TO THE
27 SUBCONTRACTOR'S EMPLOYEES UNDER THE CONTRACT WITH THE EMPLOYER
28 AND THE SUBCONTRACTOR; AND

29 (V) PROVIDE WORKERS' COMPENSATION OR CASUALTY
30 INSURANCE COVERAGE UNDER TITLE 9 OF THIS ARTICLE TO THE
31 SUBCONTRACTOR'S EMPLOYEES;

1 **(5) THAT THE EMPLOYER WILL NOT PROVIDE THE**
2 **SUBCONTRACTOR AND ANY EMPLOYEES OF THE SUBCONTRACTOR WITH ANY**
3 **FRINGE BENEFITS;**

4 **(6) THAT THE SUBCONTRACTOR HAS OBTAINED ANY NECESSARY**
5 **BUSINESS LICENSE; AND**

6 **(7) THAT THE SUBCONTRACTOR IS ENTITLED TO SEEK THE**
7 **ADVICE OF AN ATTORNEY BEFORE ENTERING INTO THE CONTRACT AND THAT**
8 **THE SUBCONTRACTOR HAS OBTAINED THE ADVICE OF AN ATTORNEY OR HAS**
9 **WAIVED THE RIGHT TO OBTAIN THE ADVICE.**

10 **(E) THERE IS A REBUTTABLE PRESUMPTION THAT MISCLASSIFICATION**
11 **OF AN EMPLOYEE UNDER § 3-902 OF THIS SUBTITLE DID NOT OCCUR IF AN**
12 **EMPLOYER ENTERS INTO A CONTRACT WITH A TIERED SUBCONTRACTOR TO**
13 **PERFORM SERVICES AND THE CONTRACT IS SIGNED BY BOTH THE EMPLOYER**
14 **AND AN AUTHORIZED AGENT OF THE TIERED SUBCONTRACTOR STATING:**

15 **(1) A DESCRIPTION OF AND THE TERM OF THE SERVICES TO BE**
16 **PERFORMED BY THE SUBCONTRACTOR FOR THE EMPLOYER;**

17 **(2) THE REMUNERATION TO BE PAID TO THE TIERED**
18 **SUBCONTRACTOR;**

19 **(3) THAT THE TIERED SUBCONTRACTOR UNDERSTANDS THAT IT**
20 **IS AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE, FOR THE SERVICES TO**
21 **BE PERFORMED AND THAT THE TIERED SUBCONTRACTOR IS NOT ENTITLED TO:**

22 **(I) THE PROTECTIONS FOR EMPLOYMENT STANDARDS AND**
23 **CONDITIONS UNDER SUBTITLES 2 THROUGH 8 OF THIS TITLE;**

24 **(II) UNEMPLOYMENT INSURANCE TAX WITHHOLDINGS OR**
25 **BENEFITS UNDER TITLE 8 OF THIS ARTICLE;**

26 **(III) WORKERS' COMPENSATION OR CASUALTY INSURANCE**
27 **COVERAGE UNDER TITLE 9 OF THIS ARTICLE; AND**

28 **(IV) TAX PAYMENTS FOR INCOME TAX UNDER TITLE 10,**
29 **SUBTITLE 9 OF THE TAX - GENERAL ARTICLE;**

30 **(4) THAT THE TIERED SUBCONTRACTOR AGREES TO:**

1 (I) PAY APPROPRIATE INCOME TAX UNDER TITLE 10,
2 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE OR ANY OTHER TAX THAT THE
3 TIERED SUBCONTRACTOR IS LEGALLY OBLIGATED TO PAY ON THE
4 REMUNERATION RECEIVED;

5 (II) WITHHOLD APPROPRIATE INCOME TAXES ON THE
6 INCOME PAID TO THE TIERED SUBCONTRACTOR'S EMPLOYEES UNDER TITLE 10,
7 SUBTITLE 9 OF THE TAX – GENERAL ARTICLE;

8 (III) COMPLY WITH THE WAGE AND HOUR LAW UNDER TITLE
9 3 OF THIS ARTICLE;

10 (IV) PAY APPROPRIATE UNEMPLOYMENT INSURANCE TAXES
11 UNDER TITLE 8 OF THIS ARTICLE ON THE INCOME PAID TO THE TIERED
12 SUBCONTRACTOR'S EMPLOYEES UNDER THE CONTRACT WITH THE EMPLOYER
13 AND THE SUBCONTRACTOR; AND

14 (V) PROVIDE WORKERS' COMPENSATION OR CASUALTY
15 INSURANCE COVERAGE UNDER TITLE 9 OF THIS ARTICLE TO THE TIERED
16 SUBCONTRACTOR'S EMPLOYEES;

17 (5) THAT THE EMPLOYER WILL NOT PROVIDE THE TIERED
18 SUBCONTRACTOR AND ANY EMPLOYEES OF THE TIERED SUBCONTRACTOR WITH
19 ANY FRINGE BENEFITS;

20 (6) THAT THE TIERED SUBCONTRACTOR HAS OBTAINED ANY
21 NECESSARY BUSINESS LICENSE; AND

22 (7) THAT THE TIERED SUBCONTRACTOR IS ENTITLED TO SEEK
23 THE ADVICE OF AN ATTORNEY BEFORE ENTERING INTO THE CONTRACT AND
24 THAT THE TIERED SUBCONTRACTOR HAS OBTAINED THE ADVICE OF AN
25 ATTORNEY OR HAS WAIVED THE RIGHT TO OBTAIN SUCH ADVICE.

26 **3-904.**

27 (A) AN EMPLOYER SHALL KEEP RECORDS CONCERNING THE
28 EMPLOYEES AND INDEPENDENT CONTRACTORS IT HAS ENGAGED TO PROVIDE
29 SERVICES, FOR AT LEAST 3 YEARS, IN OR ABOUT ITS PLACE OF BUSINESS.

30 (B) THE RECORDS SHALL CONTAIN THE FOLLOWING INFORMATION
31 ABOUT EACH EMPLOYEE AND INDEPENDENT CONTRACTOR:

32 (1) THE NAME, ADDRESS, AND OCCUPATION;

- 1 (2) **THE RATE OF PAY;**
- 2 (3) **THE AMOUNT THAT IS PAID EACH PAY PERIOD; AND**
- 3 (4) **THE HOURS WORKED EACH DAY AND EACH WORKWEEK.**

4 **(C) ON REQUEST OF THE COMMISSIONER, AN EMPLOYER SHALL ALLOW**
5 **THE COMMISSIONER TO INSPECT AND COPY THE RECORDS DESCRIBED IN THIS**
6 **SECTION.**

7 **3-905.**

8 **(A) THE COMMISSIONER SHALL PROVIDE ADEQUATE WRITTEN NOTICE**
9 **TO AN EMPLOYER OF INTENT TO SEEK A CIVIL PENALTY UNDER § 3-902 OF THIS**
10 **SUBTITLE, IF THE COMMISSIONER:**

11 **(1) DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS**
12 **SUBTITLE; AND**

13 **(2) BRINGS PROCEEDINGS AGAINST THE EMPLOYER FOR**
14 **VIOLATING A PROVISION OF SUBTITLES 2 THROUGH 5 OF THIS TITLE.**

15 **(B) THE COURT MAY IMPOSE A CIVIL PENALTY UNDER § 3-902 OF THIS**
16 **SUBTITLE IF A COURT DETERMINES THAT AN EMPLOYER HAS:**

17 **(1) VIOLATED A PROVISION OF SUBTITLES 2 THROUGH 5 OF THIS**
18 **TITLE;**

19 **(2) MISCLASSIFIED AN EMPLOYEE IN VIOLATION OF THIS**
20 **SUBTITLE; AND**

21 **(3) RECEIVED THE NOTICE SPECIFIED IN SUBSECTION (A) OF THIS**
22 **SECTION.**

23 **8-630.**

24 (a) If, after assessment, an employing unit fails to pay a contribution,
25 reimbursement payment, or interest, the Secretary may collect the amount due by a
26 civil action in the name of the State in the same manner as provided for the collection
27 of taxes under Title 13, Subtitle 8, Part III of the Tax – General Article.

28 (b) A civil action brought under this section:

29 (1) shall be heard by the court at the earliest possible date; and

1 (2) except for petitions for judicial review under this title and cases
2 arising under the workers' compensation law of the State, shall be entitled to
3 preference on the calendar of the court over all other civil actions.

4 (C) (1) **THE SECRETARY SHALL PROVIDE ADEQUATE WRITTEN**
5 **NOTICE TO AN EMPLOYER OF INTENT TO SEEK A CIVIL PENALTY UNDER § 3-902**
6 **OF THIS ARTICLE, IF THE SECRETARY:**

7 (I) **RECEIVES NOTICE FROM THE COMMISSIONER OF**
8 **LABOR AND INDUSTRY OF AN ALLEGED MISCLASSIFICATION VIOLATION UNDER**
9 **TITLE 3, SUBTITLE 9 OF THIS ARTICLE; AND**

10 (II) **BRINGS PROCEEDINGS AGAINST THE EMPLOYER FOR A**
11 **VIOLATION OF THIS TITLE.**

12 (2) **THE COURT MAY IMPOSE A CIVIL PENALTY IN THE MANNER**
13 **PROVIDED UNDER § 3-902 OF THIS ARTICLE, IF:**

14 (I) **THE SECRETARY GIVES THE NOTICE REQUIRED IN**
15 **PARAGRAPH (1) OF THIS SUBSECTION; AND**

16 (II) **A COURT DETERMINES THAT AN EMPLOYER HAS**
17 **VIOLATED THIS TITLE AND MISCLASSIFIED AN EMPLOYEE IN VIOLATION OF**
18 **TITLE 3, SUBTITLE 9 OF THIS ARTICLE.**

19 [(c)] (D) An employer adjudged in default shall pay the costs of the action
20 for collection.

21 9-407.

22 (a) If an employer fails to secure compensation for the covered employees of
23 the employer as required by § 9-402 of this subtitle, the Commission shall order the
24 employer to maintain insurance with the Injured Workers' Insurance Fund by paying
25 to the State Treasurer, for the benefit and use of the Injured Workers' Insurance
26 Fund, the premiums required for the employer to become insured with the Injured
27 Workers' Insurance Fund.

28 (b) If an employer fails to comply with an order to insure with the Injured
29 Workers' Insurance Fund passed under subsection (a) of this section or under §
30 9-404(j) or § 9-405(f) of this subtitle within 10 days after the Commission passes the
31 order, the employer is liable to the State for a penalty equal to the premiums for 6
32 months of insurance with the Injured Workers' Insurance Fund.

33 (c) The Commission may collect any unpaid amount under subsections (a)
34 and (b) of this section in the same manner and with the same effect as provided for
35 collections by the Injured Workers' Insurance Fund under § 10-133(c) of this article.

1 **(D) (1) THE COMMISSION SHALL PROVIDE ADEQUATE WRITTEN**
2 **NOTICE TO AN EMPLOYER OF INTENT TO SEEK A CIVIL PENALTY UNDER § 3-902**
3 **OF THIS ARTICLE, IF THE COMMISSION:**

4 **(I) RECEIVES NOTICE FROM THE COMMISSIONER OF**
5 **LABOR AND INDUSTRY OF AN ALLEGED MISCLASSIFICATION VIOLATION OF**
6 **TITLE 3, SUBTITLE 9 OF THIS ARTICLE; AND**

7 **(II) BRINGS PROCEEDINGS AGAINST AN EMPLOYER FOR**
8 **VIOLATING THIS SECTION.**

9 **(2) THE COURT MAY IMPOSE A CIVIL PENALTY IN THE MANNER**
10 **PROVIDED UNDER § 3-902 OF THIS ARTICLE, IF:**

11 **(I) THE COMMISSION GIVES THE NOTICE REQUIRED IN**
12 **PARAGRAPH (1) OF THIS SUBSECTION; AND**

13 **(II) A COURT DETERMINES THAT AN EMPLOYER HAS**
14 **VIOLATED THIS SECTION AND MISCLASSIFIED AN EMPLOYEE IN VIOLATION OF**
15 **TITLE 3, SUBTITLE 9 OF THIS ARTICLE.**

16 **Article - Tax - General**

17 13-816.

18 (a) If a tax under this article is not paid when due, the Governor, tax
19 collector, or Treasurer shall ask a qualified attorney who is a regular salaried
20 employee of the Comptroller or the Attorney General to bring an action against the
21 person responsible to pay the tax, unless a lien on real property under Part II of this
22 subtitle sufficiently secures the tax or a judgment in the action would not be
23 collectible.

24 (b) (1) If a request is made under subsection (a) of this section, the
25 attorney or the Attorney General shall bring the action.

26 (2) In an action under this section, the plaintiff shall be:

27 (i) the State;

28 (ii) the Treasurer; or

29 (iii) the tax collector authorized by law to collect the tax.

30 **(C) (1) THE ATTORNEY OR ATTORNEY GENERAL SHALL PROVIDE**
31 **ADEQUATE WRITTEN NOTICE TO THE EMPLOYER OF INTENT TO SEEK A CIVIL**

1 PENALTY UNDER § 3-902 OF THE LABOR AND EMPLOYMENT ARTICLE, IF THE
2 COMPTROLLER:

3 (I) RECEIVES NOTICE FROM THE COMMISSIONER OF
4 LABOR AND INDUSTRY OF AN ALLEGED VIOLATION OF TITLE 3, SUBTITLE 9 OF
5 THE LABOR AND EMPLOYMENT ARTICLE; AND

6 (II) BRINGS PROCEEDINGS AGAINST AN EMPLOYER FOR
7 VIOLATING TITLE 10, SUBTITLE 9 OF THIS ARTICLE.

8 (2) THE COURT MAY IMPOSE A CIVIL PENALTY UNDER § 3-902 OF
9 THE LABOR AND EMPLOYMENT ARTICLE, IF:

10 (I) THE ATTORNEY OR ATTORNEY GENERAL GIVES THE
11 NOTICE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

12 (II) A COURT DETERMINES THAT AN EMPLOYER HAS
13 VIOLATED TITLE 10, SUBTITLE 9 OF THIS ARTICLE AND MISCLASSIFIED AN
14 EMPLOYEE IN VIOLATION OF TITLE 3, SUBTITLE 9 OF THE LABOR AND
15 EMPLOYMENT ARTICLE.

16 [(c)] (D) If the attorney or Attorney General and the tax collector agree that
17 the full amount of the claim is not collectible, the attorney or Attorney General may:

18 (1) compromise the claim;

19 (2) accept a lesser amount; and

20 (3) issue a release of the claim or a satisfaction of the judgment.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2009.