

SENATE BILL 816

D3

3lr1580

By: **Senator Shank**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Civil Action for Embezzlement by Employee**

3 FOR the purpose of establishing that a certain employee is civilly liable to a certain
4 employer if, under certain circumstances, the employee appropriates or secretes
5 money or a thing of value held in an employment capacity; providing for the
6 award of damages, prejudgment interest, and certain costs and fees;
7 establishing that a certain criminal prosecution is not a prerequisite to
8 maintenance of an action under this Act; providing that a criminal prosecution
9 is not precluded by recovery of damages under this Act; establishing that the
10 payment of damages under this Act is not admissible in certain proceedings for
11 certain purposes; requiring a civil action brought under this Act to be filed
12 within a certain period of time; authorizing a court to issue a preliminary
13 injunction under certain circumstances; authorizing a court to require certain
14 expedited discovery; establishing the standard of proof in a civil action under
15 this Act; establishing that this Act does not affect certain causes of action,
16 defenses, or immunities; providing for the application of this Act; and generally
17 relating to a civil cause of action for embezzlement by an employee.

18 BY adding to

19 Article – Courts and Judicial Proceedings

20 Section 3–1901 through 3–1907 to be under the new subtitle “Subtitle 19. Civil
21 Action for Embezzlement by Employee”

22 Annotated Code of Maryland

23 (2006 Replacement Volume and 2012 Supplement)

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

26 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **SUBTITLE 19. CIVIL ACTION FOR EMBEZZLEMENT BY EMPLOYEE.**

2 **3-1901.**

3 **A FORMER OR CURRENT EMPLOYEE IS CIVILLY LIABLE TO A FORMER OR**
4 **CURRENT EMPLOYER IF THE EMPLOYEE:**

5 **(1) FRAUDULENTLY AND WILLFULLY APPROPRIATES MONEY OR A**
6 **THING OF VALUE THAT THE EMPLOYEE HOLDS IN AN EMPLOYMENT CAPACITY**
7 **CONTRARY TO THE REQUIREMENTS OF THE EMPLOYEE'S TRUST**
8 **RESPONSIBILITY; OR**

9 **(2) SECRETES MONEY OR A THING OF VALUE THAT THE**
10 **EMPLOYEE HOLDS IN AN EMPLOYMENT CAPACITY WITH A FRAUDULENT INTENT**
11 **TO USE THE MONEY OR THING OF VALUE CONTRARY TO THE REQUIREMENTS OF**
12 **THE EMPLOYEE'S TRUST RESPONSIBILITY.**

13 **3-1902.**

14 **AN EMPLOYER THAT PREVAILS IN A CIVIL ACTION BROUGHT UNDER THIS**
15 **SUBTITLE IS ENTITLED TO:**

16 **(1) DAMAGES IN AN AMOUNT EQUAL TO THREE TIMES THE VALUE**
17 **OF THE MONEY OR THING APPROPRIATED OR SECRETED; AND**

18 **(2) AN AWARD OF PREJUDGMENT INTEREST, COURT COSTS, AND**
19 **REASONABLE ATTORNEY'S FEES.**

20 **3-1903.**

21 **(A) CRIMINAL PROSECUTION FOR AN OFFENSE OF A THEFT UNDER §**
22 **7-113 OF THE CRIMINAL LAW ARTICLE IS NOT A PREREQUISITE TO THE**
23 **MAINTENANCE OF A CIVIL ACTION UNDER THIS SUBTITLE.**

24 **(B) THE RECOVERY OF DAMAGES UNDER THIS SUBTITLE DOES NOT**
25 **PRECLUDE CRIMINAL PROSECUTION.**

26 **(C) THE PAYMENT OF DAMAGES UNDER THIS SUBTITLE IS NOT**
27 **ADMISSIBLE IN ANY CRIMINAL PROCEEDING AS AN ADMISSION OF GUILT OR AS**
28 **EVIDENCE OF GUILT.**

29 **3-1904.**

1 **A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE SHALL BE FILED WITHIN**
2 **3 YEARS FROM THE DATE ON WHICH THE EMPLOYER KNEW OR SHOULD HAVE**
3 **KNOWN OF THE CONDUCT ON WHICH THE ACTION IS BASED.**

4 **3-1905.**

5 **IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE, A COURT MAY:**

6 **(1) ISSUE A PRELIMINARY INJUNCTION AS NECESSARY TO**
7 **PRESERVE THE MONEY OR OTHER THING OF VALUE ALLEGEDLY APPROPRIATED**
8 **OR SECRETED; AND**

9 **(2) REQUIRE EXPEDITED DISCOVERY OF THE EMPLOYEE'S**
10 **ASSETS.**

11 **3-1906.**

12 **THE STANDARD OF PROOF REQUIRED IN A CIVIL ACTION UNDER THIS**
13 **SUBTITLE IS A PREPONDERANCE OF THE EVIDENCE STANDARD.**

14 **3-1907.**

15 **THIS SUBTITLE DOES NOT AFFECT:**

16 **(1) ANY OTHER COMMON LAW OR STATUTORY CAUSE OF ACTION;**
17 **OR**

18 **(2) ANY OTHER COMMON LAW OR STATUTORY DEFENSE OR**
19 **IMMUNITY.**

20 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be**
21 **construed to apply only prospectively and may not be applied or interpreted to have**
22 **any effect on or application to any act or omission by a former or current employee**
23 **before the effective date of this Act.**

24 **SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2013.**