

SB0090/427071/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 90
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 10, after “purposes;” insert “making a certain conforming change; defining a certain term;”; after line 12, insert:

“BY renumbering

Article - Labor and Employment

Section 8-101(t) through (aa), respectively

to be Section 8-101(u) through (bb), respectively

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, without amendments,

Article - Labor and Employment

Section 8-101(a) and 8-1301

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)

BY adding to

Article - Labor and Employment

Section 8-101(t)

Annotated Code of Maryland

(2008 Replacement Volume and 2015 Supplement)”;

in line 15, after “Section” insert “8-201.1,”; in the same line, after “8-809” insert a comma; strike in their entirety lines 18 through 22, inclusive, and substitute:

“SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 8-101(t) through (aa), respectively, of Article – Labor and

(Over)

Employment of the Annotated Code of Maryland be renumbered to be Section(s) 8-101 (u) through (bb), respectively.”;

and in line 23, strike “1.” and substitute “2.”.

On page 6, in lines 10, 12, and 16, strike “2.”, “3.”, and “4.”, respectively, and substitute “3.”, “4.”, and “5.”, respectively; and in line 14, strike “1” and substitute “2”.

AMENDMENT NO. 2

On page 1, after line 25, insert:

“8-101.

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

(T) “KNOWINGLY” MEANS, EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, HAVING ACTUAL KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE TRUTH.

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 fail to properly classify an individual as an employee.

[(c)] (B) (1) If the Secretary determines that an employing unit has failed to properly classify an individual as an employee, any and all contribution or reimbursement payments resulting from the failure to properly classify that are due and unpaid shall accrue 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)] (C) 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.

[(e)] (D) If the Secretary determines that an employing unit has knowingly failed to properly classify an individual as an employee, the employing unit shall be subject to a civil penalty of not more than \$5,000 per employee.

[(f)] (E) (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.

[(g)] (F) 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)] (C) of this section for the new violation.

(Over)

[(h)] (G) (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 failure to properly classify 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.

[(i)] (H) If the Secretary determines that an employing unit has 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.

[(j)] (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.

[(k)] (J) (1) The Secretary 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.”.