

# HOUSE BILL 12

K3, Q3, K1

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By: **Delegates Glenn, Anderson, Benson, Braveboy, Conaway, Gutierrez, Haynes, Hucker, Nathan-Pulliam, Oaks, Olszewski, Pena-Melnyk, Rice, Robinson, Schuler, Stein, and Stukes**

Introduced and read first time: October 29, 2007

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Construction Industry Employee Misclassification Act**

3 FOR the purpose of prohibiting construction industry employers from failing to  
4 properly classify an individual as an employee with the intent to evade payment  
5 of wages, benefits, taxes, or other contributions as required under certain  
6 provisions of State law; prohibiting certain persons from conspiring with, aiding  
7 and abetting, or assisting another person in violating certain actions prohibited  
8 under this Act; prohibiting a person from incorporating or assisting in the  
9 incorporation of certain entities for the purposes of facilitating or evading  
10 detection of a violation of a certain provision of this Act; requiring the  
11 Commissioner of Labor and Industry to institute an investigation in a certain  
12 manner under certain circumstances; requiring the Commissioner to provide  
13 notice to the State Workers' Compensation Commission, the Division of  
14 Unemployment Insurance, and the Comptroller's Office under certain  
15 circumstances; requiring the State Workers' Compensation Commission, the  
16 Division of Unemployment Insurance, and the Comptroller's Office to provide  
17 notice to the Commissioner under certain circumstances; requiring the  
18 Commissioner to issue a stop-work order in a certain manner under certain  
19 circumstances; requiring the Commissioner to grant an employer's request for a  
20 hearing to contest a stop-work order in a certain manner; authorizing an  
21 employer to appeal a Commissioner's stop-work order in a certain manner;  
22 requiring the Commissioner to notify a public body of a certain violation by a  
23 contractor that entered into a public work contract; requiring the public body,  
24 on notification, to withhold payment to the contractor in a certain amount;  
25 requiring the Commissioner to file with the Secretary of State a certain list;  
26 prohibiting certain contractors and subcontractors from entering into a  
27 construction contract with a public body under certain circumstances;  
28 prohibiting an employer from taking certain action against a person under  
29 certain circumstances; prohibiting a person from making certain complaints to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the Commissioner or bringing an action in a certain manner under certain  
2 provisions of this Act; requiring the Commissioner to apply certain moneys  
3 collected in a certain manner; requiring the Commissioner to forward certain  
4 information to the Office of the Attorney General under certain circumstances;  
5 authorizing the Attorney General to take certain action in circuit court on  
6 referral by the Commissioner; authorizing an individual who has not been  
7 properly classified as an employee to bring a civil action for damages against an  
8 employer; authorizing an employee organization on behalf of an individual, or  
9 group of individuals, to bring a certain civil action; requiring that a certain civil  
10 action be filed within a certain time period; requiring a court to award an  
11 individual or class of individuals certain costs under certain circumstances;  
12 requiring the Commissioner to adopt regulations to carry out certain provisions  
13 of this Act; requiring a contractor to require that a subcontractor's insurance  
14 carrier provide certain evidence that the subcontractor secured workers'  
15 compensation insurance in accordance with certain provisions of the State  
16 Workers' Compensation Act; requiring a contractor to preserve certain  
17 information for a certain period of time; requiring a contractor to make certain  
18 information available to the State Workers' Compensation Commission;  
19 requiring certain contracts to provide the State Workers' Compensation  
20 Commission, the Commissioner of Labor and Industry, and the Comptroller  
21 with certain information under certain circumstances; requiring certain persons  
22 engaged in construction to file with the Comptroller a certain return within a  
23 certain time period; requiring the Comptroller to adopt certain regulations;  
24 establishing certain criminal, civil, and administrative penalties and related  
25 appeals processes; making certain provisions of this Act severable; declaring the  
26 intent of the General Assembly; defining certain terms; providing for the  
27 application of this Act; and generally relating to the misclassification of  
28 employees as independent contractors within the construction industry.

29 BY repealing and reenacting, without amendments,  
30 Article – Labor and Employment  
31 Section 3–101  
32 Annotated Code of Maryland  
33 (1999 Replacement Volume and 2007 Supplement)

34 BY repealing and reenacting, with amendments,  
35 Article – Labor and Employment  
36 Section 3–102(a), 3–103, and 3–104  
37 Annotated Code of Maryland  
38 (1999 Replacement Volume and 2007 Supplement)

39 BY adding to  
40 Article – Labor and Employment  
41 Section 3–901 through 3–914 to be under the new subtitle “Subtitle 9.  
42 Construction Industry Employee Misclassification”; and 9–411  
43 Annotated Code of Maryland  
44 (1999 Replacement Volume and 2007 Supplement)

1 BY repealing and reenacting, without amendments,  
2 Article – Tax – General  
3 Section 1–101(p)  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2007 Supplement)

6 BY adding to  
7 Article – Tax – General  
8 Section 10–831  
9 Annotated Code of Maryland  
10 (2004 Replacement Volume and 2007 Supplement)

11 Preamble

12 WHEREAS, Employee misclassification occurs when an employer classifies a  
13 worker as an independent contractor who should otherwise be considered a wage or  
14 salaried employee, or pays cash without deduction of taxes or reporting as required by  
15 law; and

16 WHEREAS, An employer that misclassifies an employee as an independent  
17 contractor fails to pay various payroll–related taxes, fees, and benefits such as social  
18 security, unemployment insurance, income taxes, workers’ compensation, and pension  
19 and health benefits; and

20 WHEREAS, An employee misclassified as an independent contractor is denied  
21 by the employer the protection of various employment laws, such as minimum wage  
22 and overtime requirements, unemployment insurance benefits, workers’ compensation  
23 protection, and the right to unionize and bargain collectively; and

24 WHEREAS, Several studies have identified the problem of employee  
25 misclassification to be particularly acute within the construction sector; and

26 WHEREAS, Employee misclassification puts businesses that, in compliance  
27 with State and federal law, properly classify employees and bear higher costs for  
28 compliance at a competitive disadvantage; and

29 WHEREAS, Employee misclassification cheats the State of Maryland out of  
30 significant payroll–related tax revenue; and

31 WHEREAS, Under current State law, there is no interagency mechanism under  
32 which the Division of Unemployment Insurance, the State Workers’ Compensation  
33 Commission, and the Comptroller’s Office may share information in an effort to  
34 penalize employers that intentionally engage in employee misclassification; now,  
35 therefore

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

1 **Article – Labor and Employment**

2 3–101.

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

9 3–102.

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

15 3–103.

- 16 (a) The Commissioner may conduct an investigation under Subtitle 2 of this  
17 title, **EITHER** on the Commissioner’s own initiative or may require a written  
18 complaint.
- 19 (b) The Commissioner may conduct an investigation under Subtitle 4 of this  
20 title, on the Commissioner’s own initiative or on receipt of a written complaint.
- 21 (c) The Commissioner may conduct an investigation to determine whether  
22 Subtitle 5 of this title has been violated on receipt of a written complaint of an  
23 employee.
- 24 (d) (1) The Commissioner may investigate whether § 3–701 of this title  
25 has been violated on receipt of a written complaint of an applicant for employment.
- 26 (2) The Commissioner may investigate whether § 3–702 of this title  
27 has been violated on receipt of a written complaint of an applicant for employment or  
28 an employee.

1           **(E) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO**  
2 **DETERMINE WHETHER SUBTITLE 9 OF THIS TITLE HAS BEEN VIOLATED EITHER**  
3 **ON THE COMMISSIONER’S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN**  
4 **COMPLAINT.**

5 3–104.

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

8           **SUBTITLE 9. CONSTRUCTION INDUSTRY EMPLOYEE MISCLASSIFICATION.**

9 **3–901.**

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

12           **(B) “CONSTRUCTION SERVICE” INCLUDES THE FOLLOWING SERVICES**  
13 **PROVIDED IN CONNECTION WITH REAL PROPERTY:**

14                   **(1) BUILDING;**

15                   **(2) RECONSTRUCTING;**

16                   **(3) IMPROVING;**

17                   **(4) ENLARGING;**

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

19                   **(6) ALTERING;**

20                   **(7) MAINTAINING; AND**

21                   **(8) REPAIRING.**

22           **(C) (1) “CONSTRUCTION INDUSTRY EMPLOYER” MEANS A**  
23 **CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ENTITY THAT IS**  
24 **PRIMARILY ENGAGED IN THE BUSINESS OF, OR ENTERS INTO A CONTRACT FOR,**  
25 **CONSTRUCTION SERVICES.**

26                   **(2) “CONSTRUCTION INDUSTRY EMPLOYER” INCLUDES A**  
27 **SUBCONTRACTOR.**

1           (D) (1) **“PUBLIC BODY” MEANS:**

2                           (I) **THE STATE;**

3                           (II) **A UNIT OF THE STATE GOVERNMENT OR**  
4 **INSTRUMENTALITY OF THE STATE; AND**

5                           (III) **ANY POLITICAL SUBDIVISION, AGENCY, PERSON, OR**  
6 **ENTITY WITH RESPECT TO THE CONSTRUCTION OF ANY PUBLIC WORK FOR**  
7 **WHICH 50% OR MORE OF THE MONEY USED FOR CONSTRUCTION IS STATE**  
8 **MONEY.**

9                           (2) **“PUBLIC BODY” DOES NOT INCLUDE ANY POLITICAL**  
10 **SUBDIVISION, AGENCY, PERSON, OR ENTITY WITH RESPECT TO THE**  
11 **CONSTRUCTION OF ANY PUBLIC WORK FOR WHICH LESS THAN 50% OF THE**  
12 **MONEY USED FOR CONSTRUCTION IS STATE MONEY.**

13           (E) **“PUBLIC WORK” MEANS A STRUCTURE OR WORK, INCLUDING A**  
14 **BRIDGE, BUILDING, DITCH, ROAD, ALLEY, WATERWORK, OR SEWAGE DISPOSAL**  
15 **PLANT, IN WHICH CONSTRUCTION IS:**

16                           (1) **FOR PUBLIC USE OR BENEFIT; OR**

17                           (2) **PAID FOR WHOLLY OR PARTLY BY PUBLIC MONEY.**

18           (F) **“PUBLIC WORK CONTRACT” MEANS A CONTRACT FOR**  
19 **CONSTRUCTION SERVICES IN CONNECTION WITH A PUBLIC WORK.**

20 **3-902.**

21           (A) **THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

22                           (1) **CONSTRUCTION INDUSTRY EMPLOYERS THAT IMPROPERLY**  
23 **CLASSIFY EMPLOYEES AS INDEPENDENT CONTRACTORS OR WHO PAY WORKERS**  
24 **IN CASH WITHOUT REPORTING THE PAY OR MAKING THE PROPER**  
25 **WITHHOLDINGS AND PAYMENTS AS REQUIRED BY LAW DEPRIVE THESE**  
26 **WORKERS OF PROPER SOCIAL SECURITY BENEFITS, WORKERS’ COMPENSATION,**  
27 **UNEMPLOYMENT COMPENSATION, OVERTIME PAY, AND OTHER BENEFITS,**  
28 **WHILE REDUCING THE EMPLOYERS’ STATE AND FEDERAL TAX WITHHOLDINGS**  
29 **AND RELATED OBLIGATIONS;**

1           (2)    THIS PRACTICE PUTS BUSINESSES THAT BEAR HIGHER COSTS  
2 FOR COMPLYING WITH THE STATE AND FEDERAL LAW AT A COMPETITIVE  
3 DISADVANTAGE;

4           (3)    THE STATE IS DENIED PROPER REVENUE NEEDED FOR THE  
5 BENEFIT OF ITS CITIZENS; AND

6           (4)    CONSTRUCTION INDUSTRY EMPLOYERS THAT VIOLATE THE  
7 LAW USE VARIOUS SCHEMES AND DEVICES INCLUDING SHELL CORPORATIONS  
8 OR SUBCONTRACT RELATIONSHIPS TO FACILITATE PROHIBITED ACTIVITIES  
9 AND EVADE DETECTION AND LIABILITY.

10          (B)    THE PURPOSE OF THIS SUBTITLE IS TO PREVENT CONSTRUCTION  
11 INDUSTRY EMPLOYERS IN THE STATE FROM KNOWINGLY MISCLASSIFYING  
12 EMPLOYEES AS INDEPENDENT CONTRACTORS FOR FINANCIAL GAIN.

13   **3-903.**

14          (A)    A CONSTRUCTION INDUSTRY EMPLOYER, OR ANY OFFICER, AGENT,  
15 SUPERINTENDENT, FOREMAN, OR EMPLOYEE OF THE CONSTRUCTION INDUSTRY  
16 EMPLOYER, MAY NOT FAIL TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN  
17 EMPLOYEE WITH THE INTENT TO EVADE PAYMENT OF WAGES, BENEFITS, TAXES,  
18 OR OTHER CONTRIBUTIONS AS REQUIRED UNDER THE PROVISIONS OF THIS  
19 TITLE, TITLE 8 OR TITLE 9 OF THIS ARTICLE, OR TITLE 10 OF THE  
20 TAX - GENERAL ARTICLE.

21          (B)    A PERSON MAY NOT CONSPIRE WITH, AID AND ABET, OR ASSIST  
22 ANOTHER PERSON IN VIOLATING SUBSECTION (A) OF THIS SECTION.

23   **3-904.**

24          (A)    A PERSON MAY NOT INCORPORATE OR FORM, OR ASSIST IN THE  
25 INCORPORATION OR FORMATION, OF A CORPORATION, PARTNERSHIP, LIMITED  
26 LIABILITY CORPORATION, OR OTHER ENTITY OR PAY OR COLLECT A FEE FOR  
27 USE OF A FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, LIMITED  
28 LIABILITY CORPORATION, OR OTHER ENTITY FOR THE PURPOSE OF  
29 FACILITATING, OR EVADING DETECTION OF, A VIOLATION OF § 3-903 OF THIS  
30 SECTION.

31          (B)    A PERSON THAT WILLFULLY VIOLATES SUBSECTION (A) OF THIS  
32 SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE  
33 NOT EXCEEDING \$20,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR  
34 BOTH.

1 **3-905.**

2 (A) THE COMMISSIONER SHALL INSTITUTE AN INVESTIGATION AS  
3 NECESSARY TO DETERMINE COMPLIANCE WITH THIS SUBTITLE AND  
4 REGULATIONS ADOPTED UNDER THIS SUBTITLE.

5 (B) THE COMMISSIONER PROMPTLY SHALL INVESTIGATE A COMPLAINT  
6 OF A VIOLATION OF THIS SUBTITLE.

7 (C) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN  
8 INDIVIDUAL IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO A  
9 CONSTRUCTION INDUSTRY EMPLOYER WITHOUT THE CONSENT OF THE  
10 INDIVIDUAL.

11 (D) A CONSTRUCTION INDUSTRY EMPLOYER SUBJECT TO AN  
12 INVESTIGATION UNDER THIS SECTION SHALL ALLOW THE COMMISSIONER TO  
13 OBSERVE WORK BEING PERFORMED, TO INTERVIEW EMPLOYEES AND  
14 INDEPENDENT CONTRACTORS, AND TO REVIEW BOOKS AND RECORDS, TO  
15 DETERMINE THE CORRECTNESS OF EACH INDIVIDUAL'S EMPLOYMENT  
16 CLASSIFICATION.

17 (E) A CONSTRUCTION INDUSTRY EMPLOYER THAT FAILS TO PRODUCE  
18 OR PROVIDE THE COMMISSIONER WITH THE BOOKS AND RECORDS IN THE  
19 MANNER REQUIRED UNDER THIS SECTION OR REGULATIONS ADOPTED UNDER  
20 THIS SUBTITLE, IN THE COURSE OF AN INVESTIGATION TO DETERMINE  
21 WHETHER THE CONSTRUCTION INDUSTRY EMPLOYER IS IN COMPLIANCE WITH  
22 THIS SUBTITLE, SHALL BE SUBJECT TO A STOP-WORK ORDER IN ACCORDANCE  
23 WITH § 3-907 OF THIS SUBTITLE AND A FINE NOT EXCEEDING \$250 PER DAY  
24 THAT THE BOOKS AND RECORDS ARE NOT PROVIDED TO THE COMMISSIONER.

25 **3-906.**

26 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
27 A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER  
28 IMMEDIATELY SHALL NOTIFY THE STATE WORKERS' COMPENSATION  
29 COMMISSION, DIVISION OF UNEMPLOYMENT INSURANCE, AND THE  
30 COMPTROLLER'S OFFICE.

31 (B) IF THE STATE WORKERS' COMPENSATION COMMISSION, DIVISION  
32 OF UNEMPLOYMENT INSURANCE, OR THE COMPTROLLER'S OFFICE  
33 DETERMINES THAT A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED, THAT  
34 ENTITY IMMEDIATELY SHALL NOTIFY THE COMMISSIONER.

35 **3-907.**



1           (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
2 A CONSTRUCTION INDUSTRY EMPLOYER FAILED TO PROPERLY CLASSIFY AN  
3 INDIVIDUAL IN ACCORDANCE WITH § 3-903 OF THIS SUBTITLE, THE  
4 COMMISSIONER SHALL ISSUE A STOP-WORK ORDER REQUIRING THE CESSATION  
5 OF ALL BUSINESS OPERATIONS AT EVERY CONSTRUCTION SITE WITHIN 72  
6 HOURS OF THAT DETERMINATION.

7           (B) THE COMMISSIONER'S ORDER SHALL TAKE EFFECT WHEN SERVED  
8 ON THE CONSTRUCTION INDUSTRY EMPLOYER OR WHEN SERVED AT THE  
9 CONSTRUCTION INDUSTRY EMPLOYER'S WORK SITE.

10           (C) (1) THE CONSTRUCTION INDUSTRY EMPLOYER MAY NOTIFY THE  
11 COMMISSIONER OF ITS REQUEST FOR AN OPPORTUNITY TO BE HEARD AND  
12 CONTEST THE STOP-WORK ORDER IN WRITING.

13                   (2) WITHIN 48 HOURS OF RECEIPT OF THE CONSTRUCTION  
14 INDUSTRY EMPLOYER'S REQUEST FOR A HEARING, THE COMMISSIONER SHALL  
15 GRANT THE CONSTRUCTION INDUSTRY EMPLOYER A HEARING TO CONTEST THE  
16 STOP-WORK ORDER.

17                   (3) THE COMMISSIONER SHALL ALLOW THE CONSTRUCTION  
18 INDUSTRY EMPLOYER TO PRESENT EVIDENCE AT THE HEARING.

19                   (4) WITHIN 5 BUSINESS DAYS AFTER THE CONCLUSION OF THE  
20 HEARING, THE COMMISSIONER SHALL:

21                           (I) FILE IN THE COMMISSIONER'S OFFICE A WRITTEN  
22 ORDER THAT STATES THE COMMISSIONER'S DETERMINATION EITHER  
23 UPHOLDING OR REVERSING THE CONSTRUCTION INDUSTRY EMPLOYER'S  
24 STOP-WORK ORDER; AND

25                           (II) SERVE, PERSONALLY OR BY MAIL, THE PARTIES TO THE  
26 HEARING WITH A COPY OF THE ORDER AND NOTICE OF ITS FILING.

27                   (5) THE COMMISSIONER SHALL INCLUDE IN A WRITTEN ORDER  
28 THE GROUNDS FOR UPHOLDING OR REVERSING THE STOP-WORK ORDER.

29                   (6) THE CONSTRUCTION INDUSTRY EMPLOYER MAY APPEAL THE  
30 COMMISSIONER'S DECISION IN ACCORDANCE WITH THE CONTESTED CASE  
31 PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2  
32 OF THE STATE GOVERNMENT ARTICLE.

1 (D) THE ORDER SHALL REMAIN IN EFFECT UNTIL THE COMMISSIONER  
2 ISSUES AN ORDER RELEASING THE STOP-WORK ORDER ON FINDING THAT THE  
3 CONSTRUCTION INDUSTRY EMPLOYER HAS PROPERLY CLASSIFIED THE  
4 INDIVIDUAL AS AN EMPLOYEE AND HAS PAID ANY PENALTY ASSESSED UNDER  
5 THIS SECTION.

6 (E) AS A CONDITION OF RELEASE FROM A STOP-WORK ORDER, THE  
7 COMMISSIONER MAY REQUIRE A CONSTRUCTION INDUSTRY EMPLOYER TO FILE  
8 WITH THE DIVISION OF LABOR AND INDUSTRY PERIODIC REPORTS FOR A  
9 PROBATIONARY PERIOD NOT EXCEEDING 2 YEARS THAT DEMONSTRATE THE  
10 CONSTRUCTION INDUSTRY EMPLOYER'S CONTINUED COMPLIANCE WITH THIS  
11 SUBTITLE.

12 (F) A STOP-WORK ORDER AND PENALTY ISSUED UNDER THIS SECTION  
13 AGAINST A CONSTRUCTION INDUSTRY EMPLOYER SHALL BE IN EFFECT AGAINST  
14 ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE OR MORE  
15 OF THE SAME PRINCIPALS OR OFFICERS AS THE CONSTRUCTION INDUSTRY  
16 EMPLOYER AGAINST WHOM THE STOP-WORK ORDER WAS ISSUED AND THAT WAS  
17 ENGAGED IN CONSTRUCTION WORK.

18 (G) (1) A CONSTRUCTION INDUSTRY EMPLOYER THAT KNOWINGLY  
19 VIOLATES A STOP-WORK ORDER IMPOSED UNDER THIS SECTION IS GUILTY OF A  
20 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING  
21 \$5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

22 (2) IN ADDITION TO THE PENALTY PROVIDED UNDER PARAGRAPH  
23 (1) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE AN  
24 ADMINISTRATIVE PENALTY OF \$5,000 FOR EACH DAY THE CONSTRUCTION  
25 INDUSTRY EMPLOYER IS IN VIOLATION OF THE STOP-WORK ORDER.

26 **3-908.**

27 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
28 A PROVISION OF THIS SUBTITLE MAY HAVE BEEN VIOLATED BY A CONTRACTOR  
29 THAT ENTERED INTO A PUBLIC WORK CONTRACT WITH A PUBLIC BODY, THE  
30 COMMISSIONER IMMEDIATELY SHALL NOTIFY THE PUBLIC BODY.

31 (B) ON NOTIFICATION, THE PUBLIC BODY SHALL WITHHOLD FROM  
32 PAYMENT DUE THE CONTRACTOR AN AMOUNT SUFFICIENT TO MAKE PAYMENT  
33 OF WAGES, BENEFITS, TAXES, OR OTHER CONTRIBUTIONS AS REQUIRED BY LAW.

34 (C) (1) (I) AFTER INVESTIGATION AND ENTRY OF A STOP-WORK  
35 ORDER IN ACCORDANCE WITH § 3-907 OF THIS SUBTITLE, THE COMMISSIONER  
36 SHALL FILE WITH THE SECRETARY OF STATE A LIST OF THE CONTRACTORS AND

1 ANY SUBCONTRACTORS WHO PERSISTENTLY AND WILLFULLY VIOLATE THE  
2 PROVISIONS OF THIS SUBTITLE.

3 (II) FILING UNDER THIS SUBSECTION SHALL BE NOTICE TO  
4 A PUBLIC BODY AND ITS REPRESENTATIVES.

5 (2) (I) IF THE NAME OF A CONTRACTOR OR ANY  
6 SUBCONTRACTOR APPEARS ON THE LIST, THAT CONTRACTOR OR  
7 SUBCONTRACTOR SHALL BE PROHIBITED FROM ENTERING INTO A CONTRACT  
8 FOR CONSTRUCTION OF A PUBLIC WORK DIRECTLY OR INDIRECTLY FOR 2  
9 YEARS FROM THE DAY ON WHICH THE LIST IS FILED.

10 (II) A PUBLIC BODY MAY NOT AWARD A CONTRACT FOR  
11 CONSTRUCTION OF A PUBLIC WORK TO A PERSON WHO IS PROHIBITED FROM  
12 ENTERING INTO A CONTRACT UNDER THIS SUBSECTION.

13 (3) THE LIST MAINTAINED IN ACCORDANCE WITH THIS  
14 SUBSECTION IS A PUBLIC RECORD.

15 (D) A PENALTY ISSUED UNDER SUBSECTION (B) OR (C) OF THIS  
16 SECTION AGAINST A CONSTRUCTION INDUSTRY EMPLOYER SHALL BE IN EFFECT  
17 AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE  
18 OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS THE CONSTRUCTION  
19 INDUSTRY EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED AND THAT  
20 WAS ENGAGED IN CONSTRUCTION WORK.

21 **3-909.**

22 (A) A CONSTRUCTION INDUSTRY EMPLOYER MAY NOT DISCRIMINATE IN  
23 ANY MANNER, OR TAKE ADVERSE ACTION, AGAINST A PERSON BECAUSE THE  
24 PERSON:

25 (1) FILES A COMPLAINT WITH THE CONSTRUCTION INDUSTRY  
26 EMPLOYER, COMMISSIONER, OR AN AUTHORIZED REPRESENTATIVE OF THE  
27 COMMISSIONER THAT THE CONSTRUCTION INDUSTRY EMPLOYER VIOLATED  
28 ANY PROVISION OF THIS SUBTITLE;

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

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

33 (B) A PERSON MAY NOT:

1           (1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE  
2 COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER;  
3 OR

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

6           (C) A PERSON THAT VIOLATES ANY PROVISION OF THIS SECTION IS  
7 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT  
8 EXCEEDING \$1,000.

9 **3-910.**

10           (A) IN ADDITION TO ANY OTHER SANCTIONS PROVIDED BY LAW, IF  
11 AFTER INVESTIGATION THE COMMISSIONER DETERMINES THAT A PERSON  
12 VIOLATED § 3-903 OF THIS SUBTITLE, THE COMMISSIONER MAY ASSESS AND  
13 COLLECT THE FOLLOWING ADMINISTRATIVE PENALTIES:

14           (1) IF THE MONETARY VALUE OF THE VIOLATION IS LESS THAN  
15 \$20,000, UP TO 125% OF THE MONETARY VALUE OF THE VIOLATION;

16           (2) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN  
17 \$20,000 BUT LESS THAN \$100,000, UP TO 150% OF THE MONETARY VALUE OF  
18 THE VIOLATION; OR

19           (3) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN  
20 \$100,000, UP TO 200% OF THE MONETARY VALUE OF THE VIOLATION.

21           (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE  
22 COMMISSIONER SHALL CONSIDER:

23           (1) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE PERSON;

24           (2) THE SERIOUSNESS OF THE VIOLATION;

25           (3) THE GOOD FAITH OF THE PERSON; AND

26           (4) THE SIZE OF THE CONSTRUCTION INDUSTRY EMPLOYER'S  
27 BUSINESS.

28           (C) BEFORE AN ADMINISTRATIVE PENALTY MAY BE IMPOSED UNDER  
29 THE PROVISIONS OF THIS SECTION, THE COMMISSIONER SHALL PROVIDE THE  
30 ALLEGED VIOLATOR:

1           (1) NOTICE OF THE VIOLATION AND THE AMOUNT OF THE  
2 PENALTY BY CERTIFIED MAIL; AND

3           (2) AN OPPORTUNITY TO REQUEST A HEARING BEFORE THE  
4 COMMISSIONER WITHIN 15 DAYS FOLLOWING THE RECEIPT OF NOTICE.

5           (D) (1) IF A HEARING IS REQUESTED, THE COMMISSIONER SHALL  
6 ISSUE A FINAL ORDER ON THAT HEARING.

7           (2) IF A HEARING IS NOT REQUESTED, THE NOTICE OF THE  
8 VIOLATION SHALL BECOME A FINAL ORDER ON THE EXPIRATION OF THE 15-DAY  
9 PERIOD.

10          (E) THE CONSTRUCTION INDUSTRY EMPLOYER MAY APPEAL THE  
11 COMMISSIONER'S FINAL ORDER IN ACCORDANCE WITH THE CONTESTED CASE  
12 PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2  
13 OF THE STATE GOVERNMENT ARTICLE.

14          (F) PAYMENT OF THE ADMINISTRATIVE PENALTY IS DUE TO THE  
15 COMMISSIONER WHEN A FINAL ORDER IS ISSUED.

16          (G) ANY SUM COLLECTED BY THE COMMISSIONER UNDER THIS SECTION  
17 SHALL BE APPLIED TOWARD ENFORCEMENT AND ADMINISTRATION COSTS  
18 INCURRED UNDER THE APPLICATION OF THIS SUBTITLE BY THE DIVISION OF  
19 LABOR AND INDUSTRY.

20 **3-911.**

21          (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT  
22 A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER  
23 SHALL REFER THE MATTER TO THE ATTORNEY GENERAL FOR APPROPRIATE  
24 ACTION.

25          (B) A PERSON THAT KNOWINGLY VIOLATES § 3-903 OF THIS SUBTITLE:

26           (1) IF THE MONETARY VALUE OF THE VIOLATION IS LESS THAN  
27 \$20,000, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A  
28 FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR  
29 BOTH;

30           (2) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN  
31 \$20,000 BUT LESS THAN \$100,000, IS GUILTY OF A FELONY AND ON CONVICTION

1 IS SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT  
2 EXCEEDING 15 YEARS OR BOTH; OR

3 (3) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN  
4 \$100,000, IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE  
5 NOT EXCEEDING \$20,000 OR IMPRISONMENT NOT EXCEEDING 30 YEARS OR  
6 BOTH.

7 **3-912.**

8 ON REFERRAL BY THE COMMISSIONER, THE ATTORNEY GENERAL MAY  
9 BRING AN ACTION IN CIRCUIT COURT FOR:

10 (1) COLLECTION OF AN UNCONTESTED, UNPAID ADMINISTRATIVE  
11 PENALTY IMPOSED BY THE COMMISSIONER UNDER THIS SUBTITLE; OR

12 (2) THE PRODUCTION OF BOOKS AND RECORDS REQUESTED BY  
13 THE COMMISSIONER IN ACCORDANCE WITH THIS SUBTITLE.

14 **3-913.**

15 (A) (1) AN INDIVIDUAL WHO HAS NOT BEEN PROPERLY CLASSIFIED  
16 AS AN EMPLOYEE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST THE  
17 EMPLOYER FOR FAILING TO PROPERLY CLASSIFY THE EMPLOYEE.

18 (2) AN EMPLOYEE ORGANIZATION MAY BRING A CIVIL ACTION ON  
19 BEHALF OF EITHER THE INDIVIDUAL OR A GROUP OF INDIVIDUALS AS A CLASS  
20 ACTION.

21 (B) AN ACTION FILED UNDER THIS SECTION SHALL BE FILED WITHIN 3  
22 YEARS OF THE ACT ON WHICH THE ACTION IS BASED.

23 (C) IF THE COURT DETERMINES THAT AN INDIVIDUAL OR CLASS OF  
24 INDIVIDUALS IS ENTITLED TO JUDGMENT IN AN ACTION AGAINST AN EMPLOYER  
25 FILED IN ACCORDANCE WITH THIS SECTION, THE COURT SHALL AWARD THE  
26 INDIVIDUAL OR CLASS OF INDIVIDUALS REASONABLE COUNSEL FEES AND  
27 OTHER COSTS OF THE ACTION.

28 **3-914.**

29 THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THE  
30 PROVISIONS OF THIS SUBTITLE.

31 **9-411.**

1           (A) IN THIS SECTION, "CONSTRUCTION SERVICES" HAS THE MEANING  
2 STATED IN § 3-901 OF THIS ARTICLE.

3           (B) THIS SECTION ONLY APPLIES TO CONTRACTORS AND  
4 SUBCONTRACTORS THAT PROVIDE CONSTRUCTION SERVICES.

5           (C) A CONTRACTOR SHALL REQUIRE A SUBCONTRACTOR TO PROVIDE  
6 EVIDENCE THAT THE SUBCONTRACTOR SECURED COMPENSATION FOR THE  
7 COVERED EMPLOYEES OF THE SUBCONTRACTOR AS REQUIRED BY § 9-402 OF  
8 THIS SUBTITLE.

9           (D) IF A SUBCONTRACTOR IS INSURED WITH A CARRIER, THE EVIDENCE  
10 OF WORKERS' COMPENSATION INSURANCE FROM THE SUBCONTRACTOR SHALL  
11 BE A COPY OF THE FIRST PAGE OF THE SUBCONTRACTOR'S "INFORMATION  
12 PAGE" OF THE SUBCONTRACTOR'S WORKERS' COMPENSATION INSURANCE  
13 POLICY, AND ANY CONTINUATION ATTACHMENTS OF THAT INFORMATION PAGE,  
14 AND A CERTIFICATE OF LIABILITY INSURANCE.

15           (E) THE "INFORMATION PAGE" SHALL INCLUDE THE NAME AND  
16 ADDRESS OF THE INSURED AS WELL AS THE CLASS CODES THE COMPENSATION  
17 PREMIUM IS BASED ON AND THE TOTAL ESTIMATED REMUNERATION PER CLASS  
18 CODE.

19           (F) THE CERTIFICATE OF LIABILITY SHALL INCLUDE THE FOLLOWING  
20 INFORMATION AND DOCUMENTATION IN ORDER TO BE CONSIDERED VALID  
21 EVIDENCE OF WORKERS' COMPENSATION INSURANCE COVERAGE:

22                   (1) THE PRODUCER SECTION LISTING THE PRODUCER'S NAME,  
23 ADDRESS, AND PHONE NUMBER;

24                   (2) THE INSURER'S AFFORDING COVERAGE SECTION LISTING THE  
25 NAME OF THE CARRIER THAT IS PROVIDING WORKERS' COMPENSATION  
26 INSURANCE;

27                   (3) THE NAME OF THE SUBCONTRACTOR LISTED AS THE INSURED;

28                   (4) THE PROPER POLICY NUMBER OR BINDER NUMBER FOR THE  
29 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE;

30                   (5) THE DOLLAR LIMITS OF COVERAGE LISTED FOR THE  
31 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE;





1 1-101.

2 (p) (1) "Person" means an individual, receiver, trustee, guardian, personal  
3 representative, fiduciary, or representative of any kind and any partnership, firm,  
4 association, corporation, or other entity.

5 (2) "Person", unless expressly provided otherwise, does not include a  
6 governmental entity or a unit or instrumentality of a governmental entity.

7 **10-831.**

8 (A) **IN THIS SECTION, "CONSTRUCTION SERVICES" HAS THE MEANING**  
9 **STATED IN § 3-901 OF THE LABOR AND EMPLOYMENT ARTICLE.**

10 (B) **THIS SECTION DOES NOT APPLY TO PAYMENT TO AN EMPLOYEE IF**  
11 **THE PAYMENT IS MADE IN THE COURSE OF EMPLOYMENT.**

12 (C) **A PERSON ENGAGED IN PROVIDING CONSTRUCTION SERVICES IN**  
13 **THE STATE, AND IN THE COURSE OF PROVIDING CONSTRUCTION SERVICES**  
14 **MAKING PAYMENT TO ANOTHER PERSON OF SALARIES, WAGES, COMPENSATION,**  
15 **REMUNERATION, EMOLUMENT, FEES FOR SERVICES, MATERIALS, OR OTHER**  
16 **INCOME IN THE AMOUNT OF \$600 OR MORE IN ANY TAXABLE YEAR, SHALL**  
17 **COMPLETE AND FILE WITH THE COMPTROLLER A RETURN ON OR BEFORE THE**  
18 **LAST DAY OF THE MONTH THAT FOLLOWS THE CALENDAR QUARTER IN WHICH**  
19 **THE GAINS, PROFIT, OR INCOME WAS EARNED.**

20 (D) **THE RETURN SHALL SET FORTH THE AMOUNT OF THE**  
21 **CONSTRUCTION GAINS, PROFIT, OR INCOME, AND THE NAME, ADDRESS, AND**  
22 **ANY APPLICABLE TAX IDENTIFICATION NUMBER OF THE RECIPIENT OF THAT**  
23 **PAYMENT.**

24 (E) **THE COMPTROLLER SHALL ADOPT REGULATIONS ESTABLISHING**  
25 **THE FORM AND MANNER IN WHICH THE RETURN SHALL BE FILED.**

26 (F) **A PERSON THAT WILLFULLY FAILS TO FILE WITH THE**  
27 **COMPTROLLER A RETURN REQUIRED UNDER SUBSECTION (C) OF THIS SECTION**  
28 **IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**  
29 **EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.**

30 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
31 Act or the application thereof to any person or circumstance is held invalid for any  
32 reason in a court of competent jurisdiction, the invalidity does not affect other  
33 provisions or any other application of this Act which can be given effect without the

1 invalid provision or application, and for this purpose the provisions of this Act are  
2 declared severable.

3 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act  
4 shall take effect June 1, 2008, and shall be applicable to all taxable years beginning  
5 after June 30, 2008.

6 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in  
7 Section 4 of this Act, this Act shall take effect October 1, 2008.