

HOUSE BILL 70

K3, K1, K2

8lr0778

(PRE-FILED)

By: **Delegate Glenn**

Requested: September 27, 2007

Introduced and read first time: January 9, 2008

Assigned to: Economic Matters and Ways and Means

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; specifying that, for
11 certain purposes, construction service performed by certain individuals is
12 employment under certain circumstances; requiring the Commissioner of Labor
13 and Industry to institute an investigation in a certain manner under certain
14 circumstances; requiring the Commissioner to provide notice to the State
15 Workers' Compensation Commission, the Division of Unemployment Insurance,
16 and the Comptroller's Office under certain circumstances; requiring the State
17 Workers' Compensation Commission, the Division of Unemployment Insurance,
18 and the Comptroller's Office to provide notice to the Commissioner under
19 certain circumstances; requiring the Commissioner to issue a stop-work order
20 in a certain manner under certain circumstances; requiring the Commissioner
21 to grant an employer's request for a hearing to contest a stop-work order in a
22 certain manner; authorizing an employer to appeal a Commissioner's stop-work
23 order in a certain manner; requiring the Commissioner to notify a public body of
24 a certain violation by a contractor that entered into a public work contract;
25 requiring the public body, on notification, to withhold payment to the contractor
26 in a certain amount; requiring the Commissioner to file with the Secretary of
27 State a certain list; prohibiting certain contractors and subcontractors from
28 entering into a construction contract with a public body under certain
29 circumstances; prohibiting an employer from taking certain action against a
30 person under certain circumstances; prohibiting a person from making certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

38 BY repealing and reenacting, without amendments,
39 Article – Labor and Employment
40 Section 3–101
41 Annotated Code of Maryland
42 (1999 Replacement Volume and 2007 Supplement)

43 BY repealing and reenacting, with amendments,
44 Article – Labor and Employment
45 Section 3–102(a), 3–103, and 3–104
46 Annotated Code of Maryland

1 (1999 Replacement Volume and 2007 Supplement)

2 BY adding to

3 Article – Labor and Employment

4 Section 3–901 through 3–916 to be under the new subtitle “Subtitle 9.

5 Construction Industry Employee Misclassification”; and 9–411

6 Annotated Code of Maryland

7 (1999 Replacement Volume and 2007 Supplement)

8 BY repealing and reenacting, without amendments,

9 Article – Tax – General

10 Section 1–101(p)

11 Annotated Code of Maryland

12 (2004 Replacement Volume and 2007 Supplement)

13 BY adding to

14 Article – Tax – General

15 Section 10–831 and 10–913

16 Annotated Code of Maryland

17 (2004 Replacement Volume and 2007 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Tax – General

20 Section 10–905 and 10–906

21 Annotated Code of Maryland

22 (2004 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Tax – General

25 Section 10–908

26 Annotated Code of Maryland

27 (2004 Replacement Volume and 2007 Supplement)

28 (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007

29 Special Session)

30 Preamble

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

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

1 WHEREAS, An employee misclassified as an independent contractor is denied
2 by the employer the protection of various employment laws, such as minimum wage
3 and overtime requirements, unemployment insurance benefits, workers' compensation
4 protection, and the right to unionize and bargain collectively; and

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

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

10 WHEREAS, Employee misclassification cheats the State of Maryland out of
11 significant payroll-related tax revenue; and

12 WHEREAS, Under current State law, there is no interagency mechanism under
13 which the Division of Unemployment Insurance, the State Workers' Compensation
14 Commission, and the Comptroller's Office may share information in an effort to
15 penalize employers that intentionally engage in employee misclassification; now,
16 therefore

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

19 **Article - Labor and Employment**

20 3-101.

- 21 (a) In this title the following words have the meanings indicated.
- 22 (b) "Commissioner" means the Commissioner of Labor and Industry.
- 23 (c) (1) "Employ" means to engage an individual to work.
- 24 (2) "Employ" includes:
- 25 (i) allowing an individual to work; and
- 26 (ii) instructing an individual to be present at a work site.

27 3-102.

- 28 (a) In addition to any duties set forth elsewhere, the Commissioner shall:
- 29 (1) enforce Subtitle 2 of this title;
- 30 (2) carry out Subtitle 3 of this title; [and]

1 (3) enforce Subtitle 4 of this title; **AND**

2 (4) **ENFORCE SUBTITLE 9 OF THIS TITLE.**

3 3–103.

4 (a) The Commissioner may conduct an investigation under Subtitle 2 of this
5 title, **EITHER** on the Commissioner’s own initiative or may require a written
6 complaint.

7 (b) The Commissioner may conduct an investigation under Subtitle 4 of this
8 title, on the Commissioner’s own initiative or on receipt of a written complaint.

9 (c) The Commissioner may conduct an investigation to determine whether
10 Subtitle 5 of this title has been violated on receipt of a written complaint of an
11 employee.

12 (d) (1) The Commissioner may investigate whether § 3–701 of this title
13 has been violated on receipt of a written complaint of an applicant for employment.

14 (2) The Commissioner may investigate whether § 3–702 of this title
15 has been violated on receipt of a written complaint of an applicant for employment or
16 an employee.

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

21 3–104.

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

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

25 **3–901.**

26 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
27 **INDICATED.**

28 **(B) (1) “CONSTRUCTION INDUSTRY EMPLOYER” MEANS A**
29 **CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ENTITY THAT IS**
30 **PRIMARILY ENGAGED IN THE BUSINESS OF, OR ENTERS INTO A CONTRACT FOR,**
31 **CONSTRUCTION SERVICES.**

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

3 (c) **“CONSTRUCTION SERVICE” INCLUDES THE FOLLOWING SERVICES**
4 **PROVIDED IN CONNECTION WITH REAL PROPERTY:**

5 (1) **BUILDING;**

6 (2) **RECONSTRUCTING;**

7 (3) **IMPROVING;**

8 (4) **ENLARGING;**

9 (5) **PAINING AND DECORATING;**

10 (6) **ALTERING;**

11 (7) **MAINTAINING; AND**

12 (8) **REPAIRING.**

13 (D) (1) **“PUBLIC BODY” MEANS:**

14 (I) **THE STATE;**

15 (II) **A UNIT OF THE STATE GOVERNMENT OR**
16 **INSTRUMENTALITY OF THE STATE; AND**

17 (III) **ANY POLITICAL SUBDIVISION, AGENCY, PERSON, OR**
18 **ENTITY WITH RESPECT TO THE CONSTRUCTION OF ANY PUBLIC WORK FOR**
19 **WHICH 50% OR MORE OF THE MONEY USED FOR CONSTRUCTION IS STATE**
20 **MONEY.**

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

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

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

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

2 **(F) "PUBLIC WORK CONTRACT" MEANS A CONTRACT FOR**
3 **CONSTRUCTION SERVICES IN CONNECTION WITH A PUBLIC WORK.**

4 **3-902.**

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

6 **(1) CONSTRUCTION INDUSTRY EMPLOYERS THAT IMPROPERLY**
7 **CLASSIFY EMPLOYEES AS INDEPENDENT CONTRACTORS OR WHO PAY WORKERS**
8 **IN CASH WITHOUT REPORTING THE PAY OR MAKING THE PROPER**
9 **WITHHOLDINGS AND PAYMENTS AS REQUIRED BY LAW DEPRIVE THESE**
10 **WORKERS OF PROPER SOCIAL SECURITY BENEFITS, WORKERS' COMPENSATION,**
11 **UNEMPLOYMENT COMPENSATION, OVERTIME PAY, AND OTHER BENEFITS,**
12 **WHILE REDUCING THE EMPLOYERS' STATE AND FEDERAL TAX WITHHOLDINGS**
13 **AND RELATED OBLIGATIONS;**

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

17 **(3) THE STATE IS DENIED PROPER REVENUE NEEDED FOR THE**
18 **BENEFIT OF ITS CITIZENS; AND**

19 **(4) CONSTRUCTION INDUSTRY EMPLOYERS THAT VIOLATE THE**
20 **LAW USE VARIOUS SCHEMES AND DEVICES INCLUDING SHELL CORPORATIONS**
21 **OR SUBCONTRACT RELATIONSHIPS TO FACILITATE PROHIBITED ACTIVITIES**
22 **AND EVADE DETECTION AND LIABILITY.**

23 **(B) THE PURPOSE OF THIS SUBTITLE IS TO PREVENT CONSTRUCTION**
24 **INDUSTRY EMPLOYERS IN THE STATE FROM KNOWINGLY MISCLASSIFYING**
25 **EMPLOYEES AS INDEPENDENT CONTRACTORS FOR FINANCIAL GAIN.**

26 **3-903.**

27 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF STATE LAW, FOR**
28 **PURPOSES OF THE ENFORCEMENT OF THIS TITLE, TITLE 8 AND TITLE 9 OF THIS**
29 **ARTICLE, AND TITLE 10 OF THE TAX - GENERAL ARTICLE, CONSTRUCTION**
30 **SERVICE PERFORMED BY AN INDIVIDUAL FOR REMUNERATION PAID BY AN**
31 **EMPLOYER SHALL CREATE AN EMPLOYER-EMPLOYEE RELATIONSHIP UNLESS IT**
32 **IS SHOWN TO THE SATISFACTION OF THE COMMISSIONER THAT:**

1 (1) UNDER CONTRACT OF SERVICE AND IN FACT, THE INDIVIDUAL
2 HAS BEEN AND WILL CONTINUE TO BE FREE FROM CONTROL OR DIRECTION
3 OVER THE PERFORMANCE OF CONSTRUCTION SERVICE;

4 (2) THE CONSTRUCTION SERVICE IS:

5 (I) OUTSIDE THE USUAL COURSE OF THE BUSINESS FOR
6 WHICH THE CONSTRUCTION SERVICE IS PERFORMED; OR

7 (II) PERFORMED OUTSIDE OF ALL THE PLACES OF BUSINESS
8 OF THE EMPLOYER FOR WHICH THE CONSTRUCTION SERVICE IS PERFORMED;
9 AND

10 (3) THE INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN
11 INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR
12 BUSINESS.

13 (B) THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR
14 TO PAY UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS'
15 COMPENSATION PREMIUMS FOR AN INDIVIDUAL'S WAGES MAY NOT BE
16 CONSIDERED IN MAKING A DETERMINATION UNDER SUBSECTION (A) OF THIS
17 SECTION.

18 **3-904.**

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

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

28 **3-905.**

29 (A) A PERSON MAY NOT INCORPORATE OR FORM, OR ASSIST IN THE
30 INCORPORATION OR FORMATION, OF A CORPORATION, PARTNERSHIP, LIMITED
31 LIABILITY CORPORATION, OR OTHER ENTITY OR PAY OR COLLECT A FEE FOR
32 USE OF A FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, LIMITED
33 LIABILITY CORPORATION, OR OTHER ENTITY FOR THE PURPOSE OF

1 FACILITATING, OR EVADING DETECTION OF, A VIOLATION OF § 3-904 OF THIS
2 SECTION.

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

7 **3-906.**

8 (A) THE COMMISSIONER SHALL INSTITUTE AN INVESTIGATION AS
9 NECESSARY TO DETERMINE COMPLIANCE WITH THIS SUBTITLE AND
10 REGULATIONS ADOPTED UNDER THIS SUBTITLE.

11 (B) THE COMMISSIONER PROMPTLY SHALL INVESTIGATE A COMPLAINT
12 OF A VIOLATION OF THIS SUBTITLE.

13 (C) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN
14 INDIVIDUAL IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO A
15 CONSTRUCTION INDUSTRY EMPLOYER WITHOUT THE CONSENT OF THE
16 INDIVIDUAL.

17 (D) A CONSTRUCTION INDUSTRY EMPLOYER SUBJECT TO AN
18 INVESTIGATION UNDER THIS SECTION SHALL ALLOW THE COMMISSIONER TO
19 OBSERVE WORK BEING PERFORMED, TO INTERVIEW EMPLOYEES AND
20 INDEPENDENT CONTRACTORS, AND TO REVIEW BOOKS AND RECORDS, TO
21 DETERMINE THE CORRECTNESS OF EACH INDIVIDUAL'S EMPLOYMENT
22 CLASSIFICATION.

23 (E) A CONSTRUCTION INDUSTRY EMPLOYER THAT FAILS TO PRODUCE
24 OR PROVIDE THE COMMISSIONER WITH THE BOOKS AND RECORDS IN THE
25 MANNER REQUIRED UNDER THIS SECTION OR REGULATIONS ADOPTED UNDER
26 THIS SUBTITLE, IN THE COURSE OF AN INVESTIGATION TO DETERMINE
27 WHETHER THE CONSTRUCTION INDUSTRY EMPLOYER IS IN COMPLIANCE WITH
28 THIS SUBTITLE, SHALL BE SUBJECT TO A STOP-WORK ORDER IN ACCORDANCE
29 WITH § 3-908 OF THIS SUBTITLE AND A FINE NOT EXCEEDING \$250 PER DAY
30 THAT THE BOOKS AND RECORDS ARE NOT PROVIDED TO THE COMMISSIONER.

31 **3-907.**

32 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
33 A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER
34 IMMEDIATELY SHALL NOTIFY THE STATE WORKERS' COMPENSATION

1 COMMISSION, DIVISION OF UNEMPLOYMENT INSURANCE, AND THE
2 COMPTROLLER'S OFFICE.

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

7 **3-908.**

8 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
9 A CONSTRUCTION INDUSTRY EMPLOYER FAILED TO PROPERLY CLASSIFY AN
10 INDIVIDUAL IN ACCORDANCE WITH § 3-904 OF THIS SUBTITLE, THE
11 COMMISSIONER SHALL ISSUE A STOP-WORK ORDER REQUIRING THE CESSATION
12 OF ALL BUSINESS OPERATIONS AT EVERY CONSTRUCTION SITE WITHIN 72
13 HOURS OF THAT DETERMINATION.

14 (B) THE COMMISSIONER'S ORDER SHALL TAKE EFFECT WHEN SERVED
15 ON THE CONSTRUCTION INDUSTRY EMPLOYER OR WHEN SERVED AT THE
16 CONSTRUCTION INDUSTRY EMPLOYER'S WORK SITE.

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

20 (2) WITHIN 48 HOURS OF RECEIPT OF THE CONSTRUCTION
21 INDUSTRY EMPLOYER'S REQUEST FOR A HEARING, THE COMMISSIONER SHALL
22 GRANT THE CONSTRUCTION INDUSTRY EMPLOYER A HEARING TO CONTEST THE
23 STOP-WORK ORDER.

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

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

28 (I) FILE IN THE COMMISSIONER'S OFFICE A WRITTEN
29 ORDER THAT STATES THE COMMISSIONER'S DETERMINATION EITHER
30 UPHOLDING OR REVERSING THE CONSTRUCTION INDUSTRY EMPLOYER'S
31 STOP-WORK ORDER; AND

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

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

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

7 (D) THE ORDER SHALL REMAIN IN EFFECT UNTIL THE COMMISSIONER
8 ISSUES AN ORDER RELEASING THE STOP-WORK ORDER ON FINDING THAT THE
9 CONSTRUCTION INDUSTRY EMPLOYER HAS PROPERLY CLASSIFIED THE
10 INDIVIDUAL AS AN EMPLOYEE AND HAS PAID ANY PENALTY ASSESSED UNDER
11 THIS SECTION.

12 (E) AS A CONDITION OF RELEASE FROM A STOP-WORK ORDER, THE
13 COMMISSIONER MAY REQUIRE A CONSTRUCTION INDUSTRY EMPLOYER TO FILE
14 WITH THE DIVISION OF LABOR AND INDUSTRY PERIODIC REPORTS FOR A
15 PROBATIONARY PERIOD NOT EXCEEDING 2 YEARS THAT DEMONSTRATE THE
16 CONSTRUCTION INDUSTRY EMPLOYER'S CONTINUED COMPLIANCE WITH THIS
17 SUBTITLE.

18 (F) A STOP-WORK ORDER AND PENALTY ISSUED UNDER THIS SECTION
19 AGAINST A CONSTRUCTION INDUSTRY EMPLOYER SHALL BE IN EFFECT AGAINST
20 ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE OR MORE
21 OF THE SAME PRINCIPALS OR OFFICERS AS THE CONSTRUCTION INDUSTRY
22 EMPLOYER AGAINST WHOM THE STOP-WORK ORDER WAS ISSUED AND THAT WAS
23 ENGAGED IN CONSTRUCTION WORK.

24 (G) (1) A CONSTRUCTION INDUSTRY EMPLOYER THAT KNOWINGLY
25 VIOLATES A STOP-WORK ORDER IMPOSED UNDER THIS SECTION IS GUILTY OF A
26 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
27 \$5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

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

32 **3-909.**

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

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

4 **(C) (1) (I) AFTER INVESTIGATION AND ENTRY OF A STOP-WORK**
5 **ORDER IN ACCORDANCE WITH § 3-908 OF THIS SUBTITLE, THE COMMISSIONER**
6 **SHALL FILE WITH THE SECRETARY OF STATE A LIST OF THE CONTRACTORS AND**
7 **ANY SUBCONTRACTORS WHO PERSISTENTLY AND WILLFULLY VIOLATE THE**
8 **PROVISIONS OF THIS SUBTITLE.**

9 **(II) FILING UNDER THIS SUBSECTION SHALL BE NOTICE TO**
10 **A PUBLIC BODY AND ITS REPRESENTATIVES.**

11 **(2) (I) IF THE NAME OF A CONTRACTOR OR ANY**
12 **SUBCONTRACTOR APPEARS ON THE LIST, THAT CONTRACTOR OR**
13 **SUBCONTRACTOR SHALL BE PROHIBITED FROM ENTERING INTO A CONTRACT**
14 **FOR CONSTRUCTION OF A PUBLIC WORK DIRECTLY OR INDIRECTLY FOR 2**
15 **YEARS FROM THE DAY ON WHICH THE LIST IS FILED.**

16 **(II) A PUBLIC BODY MAY NOT AWARD A CONTRACT FOR**
17 **CONSTRUCTION OF A PUBLIC WORK TO A PERSON WHO IS PROHIBITED FROM**
18 **ENTERING INTO A CONTRACT UNDER THIS SUBSECTION.**

19 **(3) THE LIST MAINTAINED IN ACCORDANCE WITH THIS**
20 **SUBSECTION IS A PUBLIC RECORD.**

21 **(D) A PENALTY ISSUED UNDER SUBSECTION (B) OR (C) OF THIS**
22 **SECTION AGAINST A CONSTRUCTION INDUSTRY EMPLOYER SHALL BE IN EFFECT**
23 **AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE**
24 **OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS THE CONSTRUCTION**
25 **INDUSTRY EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED AND THAT**
26 **WAS ENGAGED IN CONSTRUCTION WORK.**

27 **3-910.**

28 **(A) A CONSTRUCTION INDUSTRY EMPLOYER MAY NOT DISCRIMINATE IN**
29 **ANY MANNER, OR TAKE ADVERSE ACTION, AGAINST A PERSON BECAUSE THE**
30 **PERSON:**

31 **(1) FILES A COMPLAINT WITH THE CONSTRUCTION INDUSTRY**
32 **EMPLOYER, COMMISSIONER, OR AN AUTHORIZED REPRESENTATIVE OF THE**
33 **COMMISSIONER THAT THE CONSTRUCTION INDUSTRY EMPLOYER VIOLATED**
34 **ANY PROVISION OF THIS SUBTITLE;**

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

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

5 (B) A PERSON MAY NOT:

6 (1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE
7 COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER;
8 OR

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

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

14 **3-911.**

15 (A) IN ADDITION TO ANY OTHER SANCTIONS PROVIDED BY LAW, IF
16 AFTER INVESTIGATION THE COMMISSIONER DETERMINES THAT A PERSON
17 VIOLATED § 3-904 OF THIS SUBTITLE, THE COMMISSIONER MAY ASSESS AND
18 COLLECT THE FOLLOWING ADMINISTRATIVE PENALTIES:

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

21 (2) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN
22 \$20,000 BUT LESS THAN \$100,000, UP TO 150% OF THE MONETARY VALUE OF
23 THE VIOLATION; OR

24 (3) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN
25 \$100,000, UP TO 200% OF THE MONETARY VALUE OF THE VIOLATION.

26 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
27 COMMISSIONER SHALL CONSIDER:

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

29 (2) THE SERIOUSNESS OF THE VIOLATION;

1 **(3) THE GOOD FAITH OF THE PERSON; AND**

2 **(4) THE SIZE OF THE CONSTRUCTION INDUSTRY EMPLOYER'S**
3 **BUSINESS.**

4 **(C) BEFORE AN ADMINISTRATIVE PENALTY MAY BE IMPOSED UNDER**
5 **THE PROVISIONS OF THIS SECTION, THE COMMISSIONER SHALL PROVIDE THE**
6 **ALLEGED VIOLATOR:**

7 **(1) NOTICE OF THE VIOLATION AND THE AMOUNT OF THE**
8 **PENALTY BY CERTIFIED MAIL; AND**

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

11 **(D) (1) IF A HEARING IS REQUESTED, THE COMMISSIONER SHALL**
12 **ISSUE A FINAL ORDER ON THAT HEARING.**

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

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

20 **(F) PAYMENT OF THE ADMINISTRATIVE PENALTY IS DUE TO THE**
21 **COMMISSIONER WHEN A FINAL ORDER IS ISSUED.**

22 **(G) ANY SUM COLLECTED BY THE COMMISSIONER UNDER THIS SECTION**
23 **SHALL BE APPLIED TOWARD ENFORCEMENT AND ADMINISTRATION COSTS**
24 **INCURRED UNDER THE APPLICATION OF THIS SUBTITLE BY THE DIVISION OF**
25 **LABOR AND INDUSTRY.**

26 **3-912.**

27 **(A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
28 **A PROVISION OF THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER**
29 **SHALL REFER THE MATTER TO THE ATTORNEY GENERAL FOR APPROPRIATE**
30 **ACTION.**

31 **(B) A PERSON THAT KNOWINGLY VIOLATES § 3-904 OF THIS SUBTITLE:**

1 (1) IF THE MONETARY VALUE OF THE VIOLATION IS LESS THAN
2 **\$20,000**, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A
3 FINE NOT EXCEEDING **\$5,000** OR IMPRISONMENT NOT EXCEEDING **5 YEARS** OR
4 **BOTH**;

5 (2) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN
6 **\$20,000** BUT LESS THAN **\$100,000**, IS GUILTY OF A FELONY AND ON CONVICTION
7 IS SUBJECT TO A FINE NOT EXCEEDING **\$10,000** OR IMPRISONMENT NOT
8 EXCEEDING **15 YEARS** OR **BOTH**; OR

9 (3) IF THE MONETARY VALUE OF THE VIOLATION IS MORE THAN
10 **\$100,000**, IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE
11 NOT EXCEEDING **\$20,000** OR IMPRISONMENT NOT EXCEEDING **30 YEARS** OR
12 **BOTH**.

13 **3-913.**

14 **ON REFERRAL BY THE COMMISSIONER, THE ATTORNEY GENERAL MAY**
15 **BRING AN ACTION IN CIRCUIT COURT FOR:**

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

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

20 **3-914.**

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

24 (2) AN EMPLOYEE ORGANIZATION MAY BRING A CIVIL ACTION ON
25 BEHALF OF EITHER THE INDIVIDUAL OR A GROUP OF INDIVIDUALS AS A CLASS
26 ACTION.

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

29 (C) IF THE COURT DETERMINES THAT AN INDIVIDUAL OR CLASS OF
30 INDIVIDUALS IS ENTITLED TO JUDGMENT IN AN ACTION AGAINST AN EMPLOYER
31 FILED IN ACCORDANCE WITH THIS SECTION, THE COURT SHALL AWARD THE
32 INDIVIDUAL OR CLASS OF INDIVIDUALS REASONABLE COUNSEL FEES AND
33 OTHER COSTS OF THE ACTION.

1 **3-915.**

2 **ON OR BEFORE JANUARY 1 OF EACH YEAR, THE COMMISSIONER SHALL**
3 **REPORT TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1246 OF THE**
4 **STATE GOVERNMENT ARTICLE, ON THE COMMISSIONER'S INVESTIGATIONS OF**
5 **COMPLAINTS OF VIOLATIONS OF THIS SUBTITLE AND THE OUTCOMES OF THOSE**
6 **INVESTIGATIONS, INCLUDING:**

7 **(1) THE NUMBER OF COMPLAINTS FILED WITH THE COMMISSIONER;**

8 **(2) THE NUMBER OF NONCOMPLAINT INVESTIGATIONS INITIATED BY**
9 **THE COMMISSIONER;**

10 **(3) THE NUMBER OF STAFF CONDUCTING INVESTIGATIONS;**

11 **(4) RELIEF OBTAINED AS A RESULT OF SUCH INVESTIGATIONS**
12 **INCLUDING THE AMOUNT OF PENALTIES COLLECTED, THE NUMBER OF**
13 **STOP-WORK ORDERS ISSUED, THE NUMBER OF CRIMINAL PROSECUTIONS**
14 **INITIATED, SUCCESSFUL CRIMINAL PROSECUTIONS AND THE RESULTS OF ANY**
15 **CRIMINAL PROSECUTIONS;**

16 **(5) IF THE ATTORNEY GENERAL'S OFFICE DECLINES THE INITIATION**
17 **OF PROSECUTIONS, THE NUMBER AND REASONS FOR DECLINING TO INITIATE**
18 **PROSECUTIONS;**

19 **(6) THE COOPERATION RECEIVED IN THE COMMISSIONER'S**
20 **INVESTIGATIONS AND PROSECUTIONS FROM OTHER FEDERAL AND STATE**
21 **AGENCIES;**

22 **(7) ANY RECOMMENDATIONS BY THE COMMISSIONER TO IMPROVE**
23 **ENFORCEMENT OF THIS SUBTITLE; AND**

24 **(8) ANY OTHER INFORMATION THAT THE COMMISSIONER DETERMINES**
25 **IS RELEVANT AND HELPFUL.**

26 **3-916.**

27 **THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THE**
28 **PROVISIONS OF THIS SUBTITLE.**

29 **9-411.**

1 (A) IN THIS SECTION, "CONSTRUCTION SERVICE" 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;

32 (6) THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE
33 UNDER THE CERTIFICATE OF LIABILITY INSURANCE;

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

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

6 **10-831.**

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

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

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

19 (D) **THE RETURN SHALL SET FORTH THE AMOUNT OF THE**
20 **CONSTRUCTION PAYMENT AND THE NAME, ADDRESS, AND ANY APPLICABLE TAX**
21 **IDENTIFICATION NUMBER OF THE RECIPIENT OF THAT PAYMENT.**

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

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

28 **10-905.**

29 (a) In this Part II of this subtitle the following words have the meanings
30 indicated.

31 (a-1) "Annuity, sick pay, or retirement distribution" means:

32 (1) an annuity or sick pay payment described in § 3402(o) of the
33 Internal Revenue Code; or

1 (2) a designated distribution as defined in § 3405(e) of the Internal
2 Revenue Code other than an eligible rollover distribution within the meaning of §
3 3405(c) of the Internal Revenue Code.

4 **(A-2) (1) “CONTRACTOR” MEANS A PERSON THAT ENTERS INTO A**
5 **CONTRACT FOR CONSTRUCTION SERVICE OF A REAL PROPERTY.**

6 **(2) “CONTRACTOR” INCLUDES A SUBCONTRACTOR.**

7 **(3) “CONSTRUCTION SERVICE” HAS THE MEANING STATED IN §**
8 **3-901 OF THE LABOR AND EMPLOYMENT ARTICLE.**

9 (b) (1) “Employer” has the meaning stated in § 3401 of the Internal
10 Revenue Code.

11 (2) “Employer” includes:

12 (i) the federal government;

13 (ii) the State;

14 (iii) a county, municipal corporation, political subdivision, or
15 instrumentality of the State;

16 (iv) another state to the extent that functions of its government
17 are carried on or performed in this State; and

18 (v) if the employer is a corporation:

19 1. any officer of the corporation who exercises direct
20 control over its fiscal management; and

21 2. any agent of the corporation who has a duty to
22 withhold income tax from wages.

23 (c) “Payment subject to withholding” means:

24 (1) an annuity, sick pay, or retirement distribution;

25 (2) income that is subject to the income tax and is distributed by a
26 fiduciary to a nonresident alien;

27 (3) a payment of winnings derived from wagering in the State if the
28 payment is subject to withholding under § 3402 of the Internal Revenue Code; [and]

1 (4) a payment of a death benefit by the Board of Trustees of the State
2 Retirement and Pension System; AND

3 (5) A PAYMENT TO AN UNINCORPORATED CONTRACTOR FOR
4 CONSTRUCTION SERVICES IF THE PAYMENT IS MADE BY A PERSON OTHER THAN:

5 (I) A GOVERNMENTAL UNIT DESCRIBED IN SUBSECTION
6 (D)(2)(I) THROUGH (IV) OF THIS SECTION; OR

7 (II) AN INDIVIDUAL WITH RESPECT TO CONSTRUCTION
8 SERVICES FOR A DWELLING IN WHICH THE INDIVIDUAL RESIDES OR WILL
9 RESIDE.

10 (d) (1) "Payor" means a person responsible to make a payment subject to
11 withholding.

12 (2) "Payor" includes:

13 (i) the federal government;

14 (ii) the State;

15 (iii) a county, municipal corporation, political subdivision, or
16 instrumentality of the State;

17 (iv) another state to the extent that functions of its government
18 are carried on or performed in this State; and

19 (v) if the payor is a corporation:

20 1. any officer of the corporation who exercises direct
21 control over its fiscal management; and

22 2. any agent of the corporation who has a duty to
23 withhold income tax from payments subject to withholding.

24 (D-1) "SUBCONTRACTOR" MEANS A PERSON THAT ENTERS INTO A
25 CONTRACT WITH A CONTRACTOR FOR CONSTRUCTION SERVICES FOR REAL
26 PROPERTY.

27 (D-2) "UNINCORPORATED CONTRACTOR" MEANS AN INDIVIDUAL
28 CONTRACTOR OR A CONTRACTOR ORGANIZED AS A SOLE PROPRIETORSHIP, A
29 PARTNERSHIP, OR ANY OTHER BUSINESS FORM NOT TAXABLE AS A
30 CORPORATION UNDER THIS TITLE.

31 (e) "Wagering" includes:

1 (1) any lottery, including the State lottery; and

2 (2) any pari-mutuel wagering, including any pari-mutuel wagering
3 conducted under Title 11 of the Business Regulation Article.

4 (f) (1) Except as provided in paragraph (2) of this subsection, “wages”
5 means salary, wages, or compensation for personal services of any kind as defined in
6 §§ 3401 and 3402(o)(2)(A) of the Internal Revenue Code.

7 (2) “Wages” includes remuneration paid for services described in §
8 3401(a)(5) and (6) of the Internal Revenue Code.

9 (g) “Withhold” includes deducting income tax.

10 10–906.

11 (a) Except as provided in § 10–907 of this subtitle, each employer or payor
12 shall:

13 (1) withhold the income tax required to be withheld under § 10–908 of
14 this subtitle; and

15 (2) pay to the Comptroller the income tax withheld for a period with
16 the withholding return that covers the period.

17 (b) Any income tax withheld is deemed to be held in trust for the State by the
18 employer or payor who withholds the tax.

19 (c) An employer or payor who withholds income tax shall keep a separate
20 ledger account for withholdings that indicates clearly:

21 (1) the amount of income tax withheld; and

22 (2) that the income tax withheld is the property of the State.

23 (d) **[If SUBJECT TO SUBSECTION (E) OF THIS SECTION, IF** an employer or
24 payor negligently fails to withhold or to pay income tax in accordance with subsection
25 (a) of this section, personal liability for that income tax extends:

26 (1) to the employer or payor;

27 (2) if the employer or payor is a corporation, to:

28 (i) any officer of the corporation who exercises direct control
29 over its fiscal management; or

1 (ii) any agent of the corporation who is required to withhold and
2 pay the income tax; [and]

3 (3) if the employer or payor is a limited liability company as defined
4 under Title 4A of the Corporations and Associations Article or a limited liability
5 partnership as defined under Title 9A of the Corporations and Associations Article,
6 including a limited partnership registered as a limited liability limited partnership, to:

7 (i) any person who exercises direct control over its fiscal
8 management; and

9 (ii) any agent of the limited liability company or limited liability
10 partnership who is required to withhold and pay the income tax; **AND**

11 **(4) IF THE PAYMENT IS A PAYMENT FOR CONSTRUCTION**
12 **SERVICES SUBJECT TO WITHHOLDING, TO THE CONTRACTOR AND TO THE**
13 **OWNER OR LESSOR OF THE REAL PROPERTY FOR WHICH THE CONSTRUCTION**
14 **SERVICES ARE PROVIDED WHO IS IN DIRECT PRIVITY OF CONTRACT WITH THE**
15 **CONTRACTOR, WITH RESPECT TO:**

16 **(I) ANY PAYMENT MADE BY THE CONTRACTOR; AND**

17 **(II) ANY PAYMENT MADE BY A SUBCONTRACTOR OR A**
18 **LOWER TIER SUBCONTRACTOR PERFORMING SERVICES UNDER THE CONTRACT.**

19 **(E) AN UNINCORPORATED CONTRACTOR DOES NOT HAVE ANY RIGHT OF**
20 **ACTION AGAINST A PERSON REQUIRED TO WITHHOLD INCOME TAX FROM A**
21 **PAYMENT SUBJECT TO WITHHOLDING FOR CONSTRUCTION SERVICES AND PAID**
22 **OVER TO THE COMPTROLLER IN COMPLIANCE OR IN INTENDED COMPLIANCE**
23 **WITH THIS SECTION.**

24 10-908.

25 (a) An employer shall withhold from the wages of an individual the amount
26 indicated in the income tax withholding tables or income tax percentage withholding
27 schedules that the Comptroller prepares.

28 (b) A payor that is a fiduciary shall withhold from each distribution the
29 amount indicated in the income tax withholding tables or income tax percentage
30 withholding schedules that the Comptroller prepares.

31 (c) A payor shall withhold the amount from an annuity, sick pay, or
32 retirement distribution that the payee requests.

33 (d) A payor shall withhold from a payment subject to withholding of
34 winnings derived from wagering:

1 (1) if the payee is a resident, a rate equal to the sum of 3.0% and the
2 top marginal State income tax rate for individuals under § 10–105(a) of this title,
3 applied to the payment; and

4 (2) if the payee is a nonresident, a rate equal to the sum of the rate of
5 the tax imposed under § 10–106.1 of this title and the top marginal State income tax
6 rate for individuals under § 10–105(a) of this title, applied to the payment.

7 (e) The Board of Trustees of the State Retirement and Pension System shall
8 withhold from a payment of a death benefit to a resident payee the sum of:

9 (1) 4.75% of the payment; and

10 (2) the county income tax rate applied to the payment.

11 (f) If a payment to a resident payee is a designated distribution that is an
12 eligible rollover distribution within the meaning of § 3405(c) of the Internal Revenue
13 Code and the payment is subject to mandatory withholding of federal income tax, the
14 payor shall withhold from the payment an amount equal to 7.75% of the payment.

15 (g) (1) **A PAYOR SHALL WITHHOLD FROM A PAYMENT SUBJECT TO
16 WITHHOLDING FOR CONSTRUCTION SERVICES THE AMOUNT INDICATED IN THE
17 INCOME TAX WITHHOLDING TABLES OR INCOME TAX PERCENTAGE
18 WITHHOLDING SCHEDULES THAT THE COMPTROLLER PREPARES.**

19 (2) **THE COMPTROLLER MAY ADOPT REGULATIONS THAT EXEMPT
20 PAYMENTS FROM THE WITHHOLDING REQUIREMENT OF PARAGRAPH (1) OF
21 THIS SUBSECTION.**

22 **10-913.**

23 (A) **EACH PAYOR OF A PAYMENT FOR CONSTRUCTION SERVICES
24 REQUIRED UNDER § 10-906 OF THIS SUBTITLE TO WITHHOLD INCOME TAX FOR
25 A CONTRACTOR THAT RECEIVES PAYMENT SUBJECT TO WITHHOLDING FOR
26 CONSTRUCTION SERVICE SHALL PREPARE A STATEMENT THAT SHOWS FOR THE
27 PREVIOUS CALENDAR YEAR:**

28 (1) **THE NAME OF THE PAYOR;**

29 (2) **THE NAME OF THE CONTRACTOR WHO RECEIVES THE
30 PAYMENT SUBJECT TO WITHHOLDING;**

31 (3) **THE TOTAL AMOUNT THAT THE PAYOR PAID TO THE
32 CONTRACTOR;**

1 (4) THE TOTAL AMOUNT OF INCOME TAX THAT HAS BEEN
2 WITHHELD UNDER THIS SUBTITLE; AND

3 (5) ANY OTHER INFORMATION THAT THE COMPTROLLER
4 REQUIRES BY REGULATION.

5 (B) A PAYOR OF A PAYMENT FOR CONSTRUCTION SERVICES SUBJECT
6 TO WITHHOLDING SHALL:

7 (1) PROVIDE 2 COPIES OF THE STATEMENT REQUIRED UNDER
8 SUBSECTION (A) OF THIS SECTION TO THE CONTRACTOR WHO RECEIVES THE
9 PAYMENT ON OR BEFORE JANUARY 31 OF EACH YEAR; AND

10 (2) SUBMIT 1 COPY OF THE STATEMENT TO THE COMPTROLLER
11 ON OR BEFORE FEBRUARY 28 OF EACH YEAR.

12 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
13 SUBSECTION, A PAYOR SHALL SUBMIT STATEMENTS REQUIRED UNDER
14 SUBSECTION (A) OF THIS SECTION ON MAGNETIC MEDIA OR IN OTHER
15 MACHINE-READABLE OR ELECTRONIC FORMAT THAT THE COMPTROLLER
16 REQUIRES BY REGULATION, IF THE TOTAL NUMBER OF STATEMENTS OF THAT
17 STATEMENT TYPE THAT THE PAYOR IS REQUIRED TO SUBMIT EQUALS OR
18 EXCEEDS 100.

19 (2) THE COMPTROLLER:

20 (I) SHALL ADOPT REGULATIONS TO PROVIDE A PROCESS
21 FOR A PAYOR THAT IS REQUIRED TO SUBMIT STATEMENTS ON MAGNETIC MEDIA
22 OR IN OTHER MACHINE-READABLE OR ELECTRONIC FORMAT UNDER
23 PARAGRAPH (1) OF THIS SUBSECTION TO REQUEST A WAIVER FROM THE
24 REQUIREMENT; AND

25 (II) MAY WAIVE THE REQUIREMENT THAT A PAYOR SUBMIT
26 STATEMENTS ON MAGNETIC MEDIA OR IN OTHER MACHINE-READABLE OR
27 ELECTRONIC FORMAT UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE
28 COMPTROLLER DETERMINES THAT THE REQUIREMENT WILL RESULT IN UNDUE
29 HARDSHIP TO THE PAYOR.

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

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

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