

SENATE BILL 909

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CF HB 819

By: **The President (By Request - Administration) and Senators Kelley, Raskin, Currie, Forehand, Gladden, Harrington, King, Klausmeier, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Rosapepe, and Stone**

Introduced and read first time: February 12, 2009

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Workplace Fraud Act of 2009**

3 FOR the purpose of prohibiting certain employers from failing to properly classify
4 individuals who perform work for remuneration paid by the employer;
5 authorizing the Commissioner of Labor and Industry to initiate an investigation
6 under certain circumstances to determine whether certain violations occurred;
7 requiring the Commissioner to enforce certain provisions; establishing the
8 method of determining whether an employer–employee relationship exists for
9 purposes of proper classification under certain circumstances; establishing
10 certain presumptions; prohibiting certain employers from knowingly failing to
11 properly classify individuals who perform work for remuneration paid by the
12 employer; providing certain criteria to be used to determine whether a violation
13 is knowing; requiring the Commissioner to make certain investigations;
14 providing for the confidentiality of certain complaints or statements;
15 authorizing the Commissioner to enter a place of business under certain
16 circumstances and to require certain employers to take certain actions;
17 authorizing the Commissioner to issue a subpoena under certain circumstances
18 and to file a complaint in circuit court under certain circumstances; requiring
19 the Commissioner to issue a citation under certain circumstances; requiring the
20 Commissioner to grant an employer’s request for a hearing conducted by the
21 Office of Administrative Hearings to contest a citation; providing for certain
22 penalties for certain violations of this Act; requiring an employer to come into
23 compliance with certain laws; requiring the Commissioner to provide notice of
24 potential violations of this Act to the Workers’ Compensation Commission, the
25 Office of Unemployment Insurance, the Insurance Administration, and the
26 Comptroller’s Office under certain circumstances; requiring cooperation under
27 this Act by certain units of State government; authorizing certain individuals
28 who have not been properly classified as employees to bring a civil action for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 damages against an employer; requiring that a civil action be filed within a
2 certain time period; requiring a court to award an individual or class of
3 individuals certain costs and relief under certain circumstances; prohibiting an
4 employer from discriminating against a person under certain circumstances;
5 prohibiting a person from making certain complaints to the Commissioner;
6 authorizing certain individuals to submit certain complaints alleging
7 discrimination; authorizing the Commissioner to investigate certain complaints
8 and file certain complaints in certain circuit courts; requiring the Commissioner
9 to notify a public body of a citation issued for certain violations by an employer;
10 requiring the public body, on notification, to withhold payment to an employer
11 in a certain amount; requiring the Commissioner to file with the Secretary of
12 State, the Department of Budget and Management, and the Department of
13 General Services a list of certain violators of this Act; authorizing an employer
14 to request a review by the Secretary of Labor, Licensing, and Regulation of the
15 decision to place the employer on the list; prohibiting certain employers from
16 entering into a contract with a public body under certain circumstances;
17 requiring certain employers to retain certain records for a certain period of time;
18 requiring certain employers to provide certain individuals notice of their status
19 and classification; prohibiting a person from incorporating or assisting in the
20 incorporation of certain entities for the purposes of facilitating or evading
21 detection of a violation of this Act; prohibiting certain persons from conspiring
22 with, aiding and abetting, assisting, advising, or facilitating another person
23 with violating this Act; establishing certain civil and administrative penalties
24 under this Act and other laws under the jurisdiction of the Commissioner;
25 requiring certain penalties to be paid into the General Fund of the State;
26 requiring the Commissioner to prepare certain reports; requiring the
27 Commissioner to adopt regulations to carry out certain provisions of this Act;
28 establishing certain unemployment insurance penalties for employers that
29 misclassify employees in violation of this Act; authorizing the Secretary of
30 Labor, Licensing, and Regulation to adopt certain regulations; creating certain
31 presumptions under the unemployment insurance law and workers'
32 compensation law; prohibiting an employer from misclassifying an employee as
33 an independent contractor for purposes of workers' compensation; authorizing
34 the Workers' Compensation Commission to order certain remedies if an
35 employer misclassifies an employee; authorizing the Workers' Compensation
36 Commission to adopt certain regulations; defining certain terms; providing for
37 certain funding; making certain provisions of this Act severable; and generally
38 relating to the failure to properly classify an individual as an employee.

39 BY repealing and reenacting, with amendments,
40 Article – Labor and Employment
41 Section 2–107(g)
42 Annotated Code of Maryland
43 (2008 Replacement Volume)

44 BY repealing and reenacting, without amendments,
45 Article – Labor and Employment
46 Section 3–101

1 Annotated Code of Maryland
2 (2008 Replacement Volume)

3 BY repealing and reenacting, with amendments,
4 Article – Labor and Employment
5 Section 3–102(a), 3–103, 3–104, 8–201, 8–628, and 9–202
6 Annotated Code of Maryland
7 (2008 Replacement Volume)

8 BY adding to
9 Article – Labor and Employment
10 Section 3–901 through 3–919 to be under the new subtitle “Subtitle 9.
11 Workplace Fraud”; 8–201.1 and 9–402.1
12 Annotated Code of Maryland
13 (2008 Replacement Volume)

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

16 **Article – Labor and Employment**

17 2–107.

18 (g) **[For] NOTWITHSTANDING THE FUNDING PROVISIONS OF § 3–918 OF**
19 **THIS ARTICLE, FOR** fiscal year 2007 and for each subsequent fiscal year, the
20 Governor shall include in the annual budget bill submitted to the General Assembly
21 an appropriation for the Division of Labor and Industry sufficient to implement the
22 provisions of this section, including amounts not less than:

23 (1) \$315,000 for implementation of the Employment Standards Service
24 Unit in the Division; and

25 (2) \$385,000 for implementation of the Prevailing Wage Unit in the
26 Division.

27 3–101.

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

29 (b) “Commissioner” means the Commissioner of Labor and Industry.

30 (c) (1) “Employ” means to engage an individual to work.

31 (2) “Employ” includes:

32 (i) allowing an individual to work; and

1 (ii) instructing an individual to be present at a work site.

2 3-102.

3 (a) In addition to any duties set forth elsewhere, the Commissioner shall:

4 (1) enforce Subtitle 2 of this title;

5 (2) carry out Subtitle 3 of this title; [and]

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

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

8 3-103.

9 (a) The Commissioner may conduct an investigation under Subtitle 2 of this
10 title, on the Commissioner's own initiative or may require a written complaint.

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

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

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

18 (2) The Commissioner may investigate whether § 3-702 of this title
19 has been violated on receipt of a written complaint of an applicant for employment or
20 an employee.

21 **(E) THE COMMISSIONER MAY INVESTIGATE WHETHER SUBTITLE 9 OF**
22 **THIS TITLE HAS BEEN VIOLATED:**

23 **(1) ON THE COMMISSIONER'S OWN INITIATIVE;**

24 **(2) ON RECEIPT OF A WRITTEN COMPLAINT SIGNED BY THE**
25 **PERSON SUBMITTING THE COMPLAINT; OR**

26 **(3) ON REFERRAL FROM ANOTHER UNIT OF STATE GOVERNMENT.**

27 3-104.

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

3 **SUBTITLE 9. WORKPLACE FRAUD.**

4 **3-901.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) “CONSTRUCTION SERVICES” INCLUDES THE FOLLOWING SERVICES
8 PROVIDED IN CONNECTION WITH REAL PROPERTY:

9 (1) BUILDING;

10 (2) RECONSTRUCTING;

11 (3) IMPROVING;

12 (4) ENLARGING;

13 (5) PAINTING AND DECORATING;

14 (6) ALTERING;

15 (7) MAINTAINING; AND

16 (8) REPAIRING.

17 (C) “EMPLOYER” MEANS ANY PERSON THAT EMPLOYS AN INDIVIDUAL
18 IN THE STATE.

19 (D) “KNOWINGLY” MEANS HAVING ACTUAL KNOWLEDGE, DELIBERATE
20 IGNORANCE, OR RECKLESS DISREGARD FOR THE TRUTH.

21 (E) “LANDSCAPING SERVICES” INCLUDES THE FOLLOWING SERVICES:

22 (1) GARDEN MAINTENANCE AND PLANTING;

23 (2) LAWN CARE INCLUDING FERTILIZING, MOWING, MULCHING,
24 SEEDING, AND SPRAYING;

25 (3) SEEDING AND MOWING OF HIGHWAY STRIPS;

1 (4) **SOD LAYING;**

2 (5) **TURF INSTALLATION, EXCEPT ARTIFICIAL;**

3 (6) **ORNAMENTAL BUSH PLANTING, PRUNING, BRACING,**
4 **SPRAYING, AND REMOVAL; AND**

5 (7) **ORNAMENTAL TREE PLANTING, PRUNING, BRACING,**
6 **SPRAYING, AND REMOVAL.**

7 (F) **“PACKAGE DELIVERY SERVICES” MEANS PICKING UP INDIVIDUAL**
8 **PACKAGES FROM A SENDER OR DELIVERING INDIVIDUAL PACKAGES TO A**
9 **RECIPIENT, WHERE MORE THAN HALF OF THE PACKAGES TYPICALLY CARRIED**
10 **WEIGH 150 POUNDS OR LESS.**

11 (G) **“PUBLIC BODY” MEANS:**

12 (1) **THE STATE;**

13 (2) **A UNIT OF STATE GOVERNMENT OR INSTRUMENTALITY OF**
14 **THE STATE; OR**

15 (3) **ANY POLITICAL SUBDIVISION, AGENCY, PERSON, OR ENTITY**
16 **THAT IS A PARTY TO A CONTRACT FOR WHICH 50% OR MORE OF THE MONEY**
17 **USED IS STATE MONEY.**

18 (H) **“SOLE PROPRIETOR” MEANS AN INDIVIDUAL WHO:**

19 (1) **PERFORMS SERVICES IN A PERSONAL CAPACITY AND**
20 **EMPLOYS NO OTHER INDIVIDUALS;**

21 (2) **PERFORMS SERVICES FREE FROM THE DIRECTION AND**
22 **CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE,**
23 **SUBJECT ONLY TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES**
24 **ARE PROVIDED TO SPECIFY THE DESIRED RESULT;**

25 (3) **FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO**
26 **PROVIDE THE SERVICE;**

27 (4) **OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE**
28 **FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES IN**
29 **WHICH THE INDIVIDUAL:**

1 (I) HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR ALL
2 OF THE DEBTS AND LIABILITIES OF THE BUSINESS;

3 (II) DOES NOT PAY TAXES FOR THE BUSINESS SEPARATELY,
4 BUT REPORTS BUSINESS INCOME AND LOSSES ON THE INDIVIDUAL'S PERSONAL
5 TAX RETURN; AND

6 (III) OWNS ALL OF THE ASSETS AND PROFITS OF THE
7 BUSINESS;

8 (5) EXERCISES COMPLETE CONTROL OVER THE MANAGEMENT
9 AND OPERATIONS OF THE BUSINESS; AND

10 (6) EXERCISES THE RIGHT AND OPPORTUNITY ON A CONTINUING
11 BASIS TO PERFORM THE SERVICES OF THE BUSINESS FOR MULTIPLE ENTITIES
12 AT THE INDIVIDUAL'S SOLE CHOICE AND DISCRETION.

13 **3-902.**

14 **THIS SUBTITLE APPLIES ONLY TO THE FOLLOWING INDUSTRIES:**

15 (1) CONSTRUCTION SERVICES;

16 (2) LANDSCAPING SERVICES; AND

17 (3) PACKAGE DELIVERY SERVICES.

18 **3-903.**

19 (A) AN EMPLOYER MAY NOT FAIL TO PROPERLY CLASSIFY AN
20 INDIVIDUAL WHO PERFORMS WORK FOR REMUNERATION PAID BY THE
21 EMPLOYER.

22 (B) AN EMPLOYER HAS FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL
23 WHEN AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS AS DETERMINED
24 UNDER SUBSECTION (C) OF THIS SECTION BUT THE EMPLOYER HAS NOT
25 CLASSIFIED THE INDIVIDUAL AS AN EMPLOYEE.

26 (C) (1) FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE ONLY,
27 WORK PERFORMED BY AN INDIVIDUAL FOR REMUNERATION PAID BY AN
28 EMPLOYER SHALL BE PRESUMED TO CREATE AN EMPLOYER-EMPLOYEE
29 RELATIONSHIP, UNLESS:

30 (I) THE INDIVIDUAL IS A SOLE PROPRIETOR; OR

1 **(II) AN EMPLOYER DEMONSTRATES THAT:**

2 **1. THE INDIVIDUAL WHO PERFORMS THE WORK IS**
3 **FREE FROM CONTROL AND DIRECTION OVER ITS PERFORMANCE BOTH IN FACT**
4 **AND UNDER THE CONTRACT;**

5 **2. THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN**
6 **AN INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT**
7 **INVOLVED IN THE WORK; AND**

8 **3. THE WORK IS:**

9 **A. OUTSIDE OF THE USUAL COURSE OF BUSINESS OF**
10 **THE PERSON FOR WHOM THE WORK IS PERFORMED; OR**

11 **B. PERFORMED OUTSIDE OF ANY PLACE OF**
12 **BUSINESS OF THE PERSON FOR WHOM THE WORK IS PERFORMED.**

13 **(2) WORK IS OUTSIDE OF THE USUAL COURSE OF BUSINESS OF**
14 **THE PERSON FOR WHOM IT IS PERFORMED UNDER PARAGRAPH (1) OF THIS**
15 **SUBSECTION IF:**

16 **(I) THE INDIVIDUAL PERFORMS THE WORK OFF THE**
17 **EMPLOYER'S PREMISES;**

18 **(II) THE INDIVIDUAL PERFORMS WORK THAT IS NOT**
19 **INTEGRATED INTO THE EMPLOYER'S OPERATION; OR**

20 **(III) THE WORK PERFORMED IS UNRELATED TO THE**
21 **EMPLOYER'S BUSINESS.**

22 **(D) THE COMMISSIONER SHALL ADOPT REGULATIONS TO EXPLAIN**
23 **FURTHER AND PROVIDE SPECIFIC EXAMPLES OF THE APPLICATION OF**
24 **SUBSECTION (C) OF THIS SECTION.**

25 **3-904.**

26 **(A) AN EMPLOYER MAY NOT KNOWINGLY FAIL TO PROPERLY CLASSIFY**
27 **AN INDIVIDUAL WHO PERFORMS WORK FOR REMUNERATION PAID BY THE**
28 **EMPLOYER.**

29 **(B) AN EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY CLASSIFY AN**
30 **INDIVIDUAL WHEN:**

1 (1) AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS AS
2 DETERMINED UNDER § 3-903(C) OF THIS SUBTITLE; AND

3 (2) THE EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY
4 CLASSIFY THE INDIVIDUAL AS AN EMPLOYEE.

5 (C) IN DETERMINING WHETHER AN EMPLOYER KNOWINGLY FAILED TO
6 PROPERLY CLASSIFY AN INDIVIDUAL, THE COMMISSIONER SHALL CONSIDER
7 WHETHER, PRIOR TO HAVING THE INDIVIDUAL PERFORM WORK, THE
8 EMPLOYER:

9 (1) SOUGHT AND OBTAINED EVIDENCE THAT THE INDIVIDUAL:

10 (I) AS A SOLE PROPRIETOR, REPORTS BUSINESS INCOME
11 AND LOSSES ON THE SOLE PROPRIETOR'S PERSONAL INCOME TAX RETURNS; OR

12 (II) AS AN INDEPENDENT CONTRACTOR:

13 1. WITHHOLDS, REPORTS, AND REMITS PAYROLL
14 TAXES ON BEHALF OF ALL INDIVIDUALS WORKING FOR THE INDEPENDENT
15 CONTRACTOR;

16 2. PAYS UNEMPLOYMENT INSURANCE TAXES FOR
17 ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR; AND

18 3. MAINTAINS WORKERS' COMPENSATION
19 INSURANCE; AND

20 (2) PROVIDED TO THE SOLE PROPRIETOR OR INDEPENDENT
21 CONTRACTOR A WRITTEN NOTICE OF THE STATUS OR CLASSIFICATION OF THE
22 SOLE PROPRIETOR OR INDEPENDENT CONTRACTOR AND ALL OF THE
23 IMPLICATIONS OF THAT STATUS OR CLASSIFICATION AS REQUIRED BY § 3-914
24 OF THIS SUBTITLE.

25 (D) THE COMMISSIONER SHALL ADOPT REGULATIONS TO PROVIDE
26 GUIDANCE AS TO WHAT CONSTITUTES THE EVIDENCE RELEVANT TO THE
27 DETERMINATION OF WHETHER AN EMPLOYER'S FAILURE TO PROPERLY
28 CLASSIFY WAS KNOWING.

29 **3-905.**

1 **(A) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO**
2 **DETERMINE COMPLIANCE WITH THIS SUBTITLE AND REGULATIONS ADOPTED**
3 **UNDER THIS SUBTITLE.**

4 **(B) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN**
5 **INDIVIDUAL AS PART OF AN INVESTIGATION UNDER THIS SECTION IS**
6 **CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE CONSENT OF THE**
7 **INDIVIDUAL.**

8 **(C) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS TO:**

9 **(1) OBSERVE WORK BEING PERFORMED;**

10 **(2) INTERVIEW INDIVIDUALS ON THE WORK SITE, INCLUDING**
11 **THOSE IDENTIFIED AS EMPLOYEES AND INDEPENDENT CONTRACTORS; AND**

12 **(3) REVIEW AND COPY RECORDS.**

13 **(D) THE COMMISSIONER MAY REQUIRE EACH EMPLOYER TO:**

14 **(1) IDENTIFY AND PRODUCE ALL RECORDS RELEVANT TO THE**
15 **CLASSIFICATION OF EACH INDIVIDUAL;**

16 **(2) ATTEST TO THE TRUTHFULNESS OF EACH RECORD THAT IS**
17 **COPIED IN ACCORDANCE WITH SUBSECTION (C)(3) OF THIS SECTION AND TO**
18 **SIGN THE COPY; OR**

19 **(3) AT THE OPTION OF THE EMPLOYER, SUBMIT A WRITTEN**
20 **STATEMENT ABOUT THE CLASSIFICATION OF EACH EMPLOYEE ON THE FORM**
21 **PROVIDED BY THE COMMISSIONER, WITH ANY RELEVANT RECORDS ATTACHED.**

22 **(E) AN EMPLOYER THAT FAILS TO PRODUCE RECORDS OR A WRITTEN**
23 **STATEMENT UNDER SUBSECTION (D) OF THIS SECTION WITHIN 5 BUSINESS DAYS**
24 **OF THE COMMISSIONER'S REQUEST SHALL BE SUBJECT TO A FINE NOT**
25 **EXCEEDING \$500 PER DAY FOR EACH DAY THE RECORDS ARE NOT PRODUCED.**

26 **(F) (1) THE COMMISSIONER MAY ISSUE A SUBPOENA FOR TESTIMONY**
27 **AND THE PRODUCTION OF RECORDS.**

28 **(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED**
29 **UNDER THIS SUBSECTION, THE COMMISSIONER MAY FILE A COMPLAINT IN THE**
30 **CIRCUIT COURT FOR THE COUNTY WHERE THE PERSON RESIDES, IS EMPLOYED,**
31 **OR HAS A PLACE OF BUSINESS, REQUESTING AN ORDER DIRECTING**
32 **COMPLIANCE WITH THE SUBPOENA.**

1 **3-906.**

2 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
3 AN EMPLOYER HAS VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED
4 UNDER THIS SUBTITLE, THE COMMISSIONER SHALL PROMPTLY ISSUE A
5 CITATION TO THE EMPLOYER.

6 (B) EACH CITATION SHALL:

7 (1) DESCRIBE IN DETAIL THE NATURE OF THE ALLEGED
8 VIOLATION;

9 (2) CITE THE PROVISION OF THIS SUBTITLE OR ANY REGULATION
10 THAT THE EMPLOYER IS ALLEGED TO HAVE VIOLATED; AND

11 (3) STATE THE CIVIL PENALTY, IF ANY, THAT THE COMMISSIONER
12 PROPOSES TO ASSESS.

13 (C) WITHIN A REASONABLE TIME AFTER ISSUANCE OF A CITATION, THE
14 COMMISSIONER SHALL SEND BY CERTIFIED MAIL TO THE EMPLOYER:

15 (1) A COPY OF THE CITATION; AND

16 (2) NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING.

17 (D) WITHIN 15 DAYS AFTER AN EMPLOYER RECEIVES A NOTICE UNDER
18 SUBSECTION (C) OF THIS SECTION, THE EMPLOYER MAY SUBMIT A WRITTEN
19 REQUEST FOR A HEARING ON THE CITATION AND PROPOSED PENALTY.

20 (E) IF A HEARING IS NOT REQUESTED WITHIN 15 DAYS, THE CITATION,
21 INCLUDING ANY PENALTIES, SHALL BECOME A FINAL ORDER OF THE
22 COMMISSIONER.

23 (F) IF THE EMPLOYER REQUESTS A HEARING, THE COMMISSIONER
24 SHALL DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE
25 AUTHORITY TO HOLD A HEARING AND ISSUE PROPOSED FINDINGS OF FACT AND
26 CONCLUSIONS OF LAW, AND A PROPOSED ORDER IN ACCORDANCE WITH TITLE
27 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

28 (G) A PROPOSED DECISION OF AN ADMINISTRATIVE LAW JUDGE ISSUED
29 IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
30 ARTICLE SHALL BECOME A FINAL ORDER OF THE COMMISSIONER UNLESS,
31 WITHIN 15 DAYS OF THE ISSUANCE OF THE PROPOSED DECISION:

1 (1) THE COMMISSIONER ORDERS REVIEW OF THE PROPOSED
2 DECISION; OR

3 (2) AN EMPLOYER SUBMITS TO THE COMMISSIONER A WRITTEN
4 REQUEST FOR REVIEW OF THE PROPOSED DECISION.

5 (H) AFTER REVIEW OF THE PROPOSED DECISION UNDER SUBSECTION
6 (G) OF THIS SECTION, WITH OR WITHOUT A HEARING ON THE RECORD, THE
7 COMMISSIONER SHALL ISSUE AN ORDER THAT, ON THE BASIS OF FINDINGS OF
8 FACT AND CONCLUSIONS OF LAW, AFFIRMS, MODIFIES, OR VACATES THE
9 PROPOSED DECISION.

10 **3-907.**

11 (A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
12 AN EMPLOYER FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
13 EMPLOYEE IN VIOLATION OF § 3-903 OF THIS SUBTITLE, OR KNOWINGLY FAILED
14 TO PROPERLY CLASSIFY AN EMPLOYEE IN VIOLATION OF § 3-904 OF THIS
15 SUBTITLE, AND ISSUES A CITATION, THE COMMISSIONER SHALL NOTIFY THE
16 COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE INSURANCE
17 ADMINISTRATION, AND THE WORKERS' COMPENSATION COMMISSION TO
18 ENABLE THESE AGENCIES TO ASSURE AN EMPLOYER'S COMPLIANCE WITH
19 THEIR LAWS, UTILIZING THEIR OWN DEFINITIONS, STANDARDS, AND
20 PROCEDURES.

21 (B) AN EMPLOYER FOUND IN VIOLATION OF § 3-903 OR § 3-904 OF THIS
22 SUBTITLE BY A FINAL ORDER OF A COURT OR THE COMMISSIONER SHALL BE
23 REQUIRED, WITHIN 30 DAYS OF THE FINAL ORDER:

24 (1) TO PAY RESTITUTION TO ANY INDIVIDUAL NOT PROPERLY
25 CLASSIFIED; AND

26 (2) TO OTHERWISE COME INTO COMPLIANCE WITH ALL
27 APPLICABLE LABOR LAWS, INCLUDING THOSE RELATED TO INCOME TAX
28 WITHHOLDING, UNEMPLOYMENT INSURANCE, WAGE LAWS, AND WORKERS'
29 COMPENSATION.

30 **3-908.**

31 (A) AN EMPLOYER IN VIOLATION OF § 3-903 OF THIS SUBTITLE WHO
32 COMES INTO TIMELY COMPLIANCE WITH ALL APPLICABLE LABOR LAWS AS
33 REQUIRED BY § 3-907(B) OF THIS SUBTITLE MAY NOT BE ASSESSED A PENALTY.

1 (B) AN EMPLOYER IN VIOLATION OF § 3-903 OF THIS SUBTITLE WHO
2 FAILS TO COME INTO TIMELY COMPLIANCE WITH ALL APPLICABLE LABOR LAWS
3 AS REQUIRED BY § 3-907(B) OF THIS SUBTITLE SHALL BE ASSESSED A CIVIL
4 PENALTY OF UP TO \$3,000 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS
5 NOT IN COMPLIANCE.

6 (C) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES UNDER
7 THIS SECTION BY ONLY ONE FINAL ORDER OF A COURT OR ADMINISTRATIVE
8 UNIT FOR THE SAME ACTIONS CONSTITUTING NONCOMPLIANCE WITH
9 APPLICABLE LABOR LAWS AS REQUIRED BY § 3-907(B) OF THIS SUBTITLE.

10 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
11 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,
12 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
13 MULTIPLE FINAL ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE
14 UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT
15 INSURANCE, THE INSURANCE ADMINISTRATION, AND THE WORKERS'
16 COMPENSATION COMMISSION.

17 (D) ANY PENALTY ISSUED UNDER THIS SECTION AGAINST AN EMPLOYER
18 SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS
19 ENTITY THAT:

20 (1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS
21 THE EMPLOYER AGAINST WHOM THE PENALTY WAS ASSESSED; AND

22 (2) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR
23 ACTIVITY.

24 **3-909.**

25 (A) AN EMPLOYER FOUND TO HAVE KNOWINGLY FAILED TO PROPERLY
26 CLASSIFY AN INDIVIDUAL IN VIOLATION OF § 3-904 OF THIS SUBTITLE SHALL BE
27 ASSESSED A CIVIL PENALTY OF UP TO \$5,000 FOR EACH EMPLOYEE WHO WAS
28 NOT PROPERLY CLASSIFIED.

29 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
30 COMMISSIONER SHALL CONSIDER:

31 (1) THE GRAVITY OF THE VIOLATION;

32 (2) THE SIZE OF THE EMPLOYER'S BUSINESS;

33 (3) THE EMPLOYER'S GOOD FAITH;

1 (4) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS
2 SUBTITLE; AND

3 (5) WHETHER THE EMPLOYER:

4 (I) HAS BEEN FOUND, BY A COURT OR AN ADMINISTRATIVE
5 UNIT, TO HAVE DEPRIVED THE EMPLOYEE OF ANY RIGHTS TO WHICH THE
6 EMPLOYEE WOULD HAVE BEEN ENTITLED UNDER A STATE PROTECTIVE LABOR
7 LAW, INCLUDING BUT NOT LIMITED TO:

8 1. ANY PROVISION OF THE LABOR AND
9 EMPLOYMENT ARTICLE;

10 2. THE STATE PREVAILING WAGE LAW, UNDER §§
11 17-221 AND 17-222 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

12 3. THE LIVING WAGE LAW, UNDER § 18-108 OF THE
13 STATE FINANCE AND PROCUREMENT ARTICLE; AND

14 (II) HAS MADE RESTITUTION AND COME INTO COMPLIANCE
15 WITH ALL SUCH STATE PROTECTIVE LABOR LAWS WITH RESPECT TO THE
16 EMPLOYEE.

17 (C) AN EMPLOYER IN VIOLATION OF § 3-904 OF THIS SUBTITLE MAY BE
18 ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH IN
19 SUBSECTION (A) OF THIS SECTION IF THE EMPLOYER HAS BEEN FOUND
20 PREVIOUSLY TO HAVE VIOLATED THIS SUBTITLE BY A FINAL ORDER OF A COURT
21 OR ADMINISTRATIVE UNIT.

22 (D) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES UNDER
23 THIS SECTION BY ONLY ONE FINAL ORDER OF A COURT OR ADMINISTRATIVE
24 UNIT FOR THE SAME ACTIONS CONSTITUTING A VIOLATION OF THIS SUBTITLE.

25 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
26 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,
27 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
28 ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE UNITS, INCLUDING
29 THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE
30 INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION
31 COMMISSION.

1 **(E) ANY PENALTY ISSUED UNDER THIS SECTION AGAINST AN EMPLOYER**
2 **SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS**
3 **ENTITY THAT:**

4 **(1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS**
5 **THE EMPLOYER AGAINST WHOM THE PENALTY WAS ASSESSED; AND**

6 **(2) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR**
7 **ACTIVITY.**

8 **3-910.**

9 **AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE**
10 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE**
11 **DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE**
12 **COMPTROLLER, THE MARYLAND INSURANCE ADMINISTRATION, AND OTHER**
13 **STATE AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING**
14 **ANY SUSPECTED FAILURE TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN**
15 **EMPLOYEE.**

16 **3-911.**

17 **(A) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER THIS**
18 **SUBTITLE, AN INDIVIDUAL WHO HAS NOT BEEN PROPERLY CLASSIFIED AS AN**
19 **EMPLOYEE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST THE EMPLOYER**
20 **FOR ANY VIOLATION OF THIS SUBTITLE.**

21 **(B) AN ACTION FILED UNDER THIS SECTION SHALL BE FILED WITHIN 3**
22 **YEARS OF THE DATE THE CAUSE OF ACTION ACCRUES.**

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 MAY AWARD EACH**
26 **INDIVIDUAL:**

27 **(1) ANY DAMAGES TO WHICH THE INDIVIDUAL MAY BE ENTITLED**
28 **UNDER SUBSECTION (A) OF THIS SECTION;**

29 **(2) AN ADDITIONAL AMOUNT UP TO THREE TIMES THE AMOUNT**
30 **OF ANY SUCH DAMAGES;**

31 **(3) REASONABLE COUNSEL FEES AND OTHER COSTS OF THE**
32 **ACTION; AND**

1 (4) **ANY OTHER APPROPRIATE RELIEF.**

2 **3-912.**

3 (A) **AN EMPLOYER MAY NOT DISCRIMINATE IN ANY MANNER OR TAKE**
4 **ADVERSE ACTION AGAINST AN INDIVIDUAL BECAUSE THE INDIVIDUAL:**

5 (1) **FILES A COMPLAINT WITH THE EMPLOYER OR THE**
6 **COMMISSIONER ALLEGING THAT THE EMPLOYER VIOLATED ANY PROVISION OF**
7 **THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE;**

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

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

12 (B) **AN INDIVIDUAL MAY NOT:**

13 (1) **MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE**
14 **COMMISSIONER; OR**

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

17 (C) (1) **AN INDIVIDUAL WHO BELIEVES THAT AN EMPLOYER HAS**
18 **DISCRIMINATED IN ANY MANNER OR TAKEN ADVERSE ACTION AGAINST THE**
19 **INDIVIDUAL IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT**
20 **TO THE COMMISSIONER A WRITTEN COMPLAINT THAT ALLEGES THE**
21 **DISCRIMINATION AND THAT INCLUDES THE SIGNATURE OF THE INDIVIDUAL.**

22 (2) **AN INDIVIDUAL SHALL FILE A COMPLAINT UNDER THIS**
23 **SUBSECTION WITHIN 180 DAYS AFTER THE ALLEGED DISCRIMINATION OCCURS.**

24 (D) (1) **ON RECEIPT OF A COMPLAINT UNDER SUBSECTION (C) OF**
25 **THIS SECTION, THE COMMISSIONER MAY INVESTIGATE.**

26 (2) **THE COMMISSIONER SHALL PROVIDE THE EMPLOYER WITH**
27 **AN OPPORTUNITY TO RESPOND TO THE ALLEGATIONS IN THE COMPLAINT.**

28 (3) **IF, AFTER INVESTIGATION AND CONSIDERATION OF ANY**
29 **RESPONSE FROM THE EMPLOYER, THE COMMISSIONER DETERMINES THAT AN**
30 **EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS**
31 **SECTION, THE COMMISSIONER SHALL FILE A COMPLAINT TO ENJOIN THE**

1 VIOLATION, TO REINSTATE THE EMPLOYEE TO THE FORMER POSITION WITH
2 BACK PAY, AND TO AWARD ANY OTHER APPROPRIATE DAMAGES OR OTHER
3 RELIEF IN THE CIRCUIT COURT FOR:

4 (I) THE COUNTY IN WHICH THE ALLEGED VIOLATION
5 OCCURRED;

6 (II) THE COUNTY IN WHICH THE EMPLOYER HAS ITS
7 PRINCIPAL OFFICE; OR

8 (III) BALTIMORE CITY.

9 (4) WITHIN 120 DAYS AFTER THE COMMISSIONER RECEIVES A
10 COMPLAINT, THE COMMISSIONER SHALL NOTIFY THE EMPLOYEE OF THE
11 DETERMINATION UNDER THIS SUBSECTION.

12 **3-913.**

13 (A) WHERE, AFTER INVESTIGATION, THE COMMISSIONER ISSUES A
14 CITATION FOR A VIOLATION OF THIS SUBTITLE OR REGULATIONS ADOPTED
15 UNDER THIS SUBTITLE BY AN EMPLOYER ENGAGED IN WORK ON A CONTRACT
16 WITH A PUBLIC BODY, THE COMMISSIONER SHALL PROMPTLY NOTIFY THE
17 PUBLIC BODY.

18 (B) (1) ON NOTIFICATION, THE PUBLIC BODY SHALL WITHHOLD
19 FROM PAYMENT DUE THE EMPLOYER AN AMOUNT THAT IS SUFFICIENT TO:

20 (I) PAY RESTITUTION TO EACH EMPLOYEE FOR THE FULL
21 AMOUNT OF WAGES DUE; AND

22 (II) PAY ANY BENEFITS, TAXES, OR OTHER CONTRIBUTIONS
23 THAT ARE REQUIRED BY LAW TO BE PAID ON BEHALF OF THE EMPLOYEE.

24 (2) THE PUBLIC BODY SHALL RELEASE:

25 (I) ON ISSUANCE OF A FAVORABLE FINAL ORDER OF A
26 COURT OR ADMINISTRATIVE UNIT, THE FULL AMOUNT OF THE WITHHELD
27 FUNDS; AND

28 (II) ON AN ADVERSE FINAL ORDER OF A COURT OR
29 ADMINISTRATIVE UNIT, THE BALANCE OF THE WITHHELD FUNDS AFTER ALL
30 OBLIGATIONS ARE SATISFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

1 (c) (1) SUBJECT TO THE PROCESS SET FORTH IN THIS SUBSECTION,
2 THE COMMISSIONER SHALL FILE WITH THE SECRETARY OF STATE, THE
3 DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT OF GENERAL
4 SERVICES, AND THE BOARD OF PUBLIC WORKS A LIST OF THE EMPLOYERS WHO
5 ARE SUBJECT TO DEBARMENT.

6 (2) AN EMPLOYER FOUND IN VIOLATION OF THIS SUBTITLE BY
7 MORE THAN TWO FINAL ADMINISTRATIVE OR JUDICIAL ORDERS SHALL BE
8 SUBJECT TO DEBARMENT.

9 (3) WITHIN 15 DAYS AFTER AN EMPLOYER RECEIVES A FINAL
10 ADMINISTRATIVE OR JUDICIAL ORDER FINDING A VIOLATION OF THIS
11 SUBTITLE, WHICH TRIGGERS DEBARMENT UNDER THIS SUBSECTION, AN
12 EMPLOYER MAY REQUEST A REVIEW BY THE SECRETARY OF WHETHER
13 DEBARMENT IS WARRANTED.

14 (4) AFTER REVIEW OF THE FINAL ORDERS TRIGGERING
15 DEBARMENT, WITH OR WITHOUT A HEARING ON THE RECORD, THE SECRETARY
16 SHALL ISSUE AN ORDER AS TO WHETHER THE EMPLOYER SHALL BE PLACED ON
17 THE LIST OF EMPLOYERS FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

18 (5) THE COMMISSIONER'S FILING UNDER THIS SUBSECTION
19 SHALL BE NOTICE TO A PUBLIC BODY AND ITS REPRESENTATIVES.

20 (6) AN EMPLOYER THAT IS ON THE LIST SHALL BE PROHIBITED
21 FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY DIRECTLY OR
22 INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE EMPLOYER
23 APPEARED ON THE LIST.

24 (7) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN
25 EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER THIS
26 SUBSECTION.

27 (8) THE LIST MAINTAINED IN ACCORDANCE WITH THIS
28 SUBSECTION IS A PUBLIC RECORD.

29 (9) A DEBARMENT UNDER THIS SECTION SHALL BE IN EFFECT
30 AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT:

31 (I) HAS ONE OR MORE OF THE SAME PRINCIPALS OR
32 OFFICERS AS THE EMPLOYER AGAINST WHOM THE DEBARMENT WAS IMPOSED;
33 AND

1 (D) THE COMMISSIONER SHALL ADOPT REGULATIONS ESTABLISHING
2 THE SPECIFIC REQUIREMENTS FOR THE CONTENTS AND FORM OF THE NOTICE.

3 **3-915.**

4 (A) A PERSON MAY NOT KNOWINGLY INCORPORATE OR FORM, OR
5 ASSIST IN THE INCORPORATION OR FORMATION OF, A CORPORATION,
6 PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY, OR PAY
7 OR COLLECT A FEE FOR USE OF A FOREIGN OR DOMESTIC CORPORATION,
8 PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY FOR THE
9 PURPOSE OF FACILITATING, OR EVADING DETECTION OF, A VIOLATION OF THIS
10 SUBTITLE.

11 (B) A PERSON MAY NOT KNOWINGLY CONSPIRE WITH, AID AND ABET,
12 ASSIST, ADVISE, OR FACILITATE AN EMPLOYER WITH THE INTENT OF VIOLATING
13 THIS SUBTITLE.

14 (C) A PERSON THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO A
15 CIVIL PENALTY NOT EXCEEDING \$20,000.

16 (D) THE PROCEDURES GOVERNING INVESTIGATIONS, CITATIONS, AND
17 ADMINISTRATIVE AND JUDICIAL REVIEW OF AN ALLEGED VIOLATION UNDER
18 THIS SECTION SHALL BE THE SAME AS THOSE SET FORTH IN §§ 3-905 AND 3-906
19 OF THIS SUBTITLE.

20 (E) A PERSON MAY BE ASSESSED CIVIL PENALTIES UNDER THIS
21 SECTION BY ONLY ONE FINAL ORDER OF A COURT OR ADMINISTRATIVE UNIT
22 FOR THE SAME ACTIONS CONSTITUTING THE VIOLATION.

23 **3-916.**

24 THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THE
25 PROVISIONS OF THIS SUBTITLE.

26 **3-917.**

27 EACH CIVIL PENALTY UNDER THIS SUBTITLE SHALL BE PAID INTO THE
28 GENERAL FUND OF THE STATE.

29 **3-918.**

30 (A) THE PROPOSED BUDGET OF THE DIVISION OF LABOR AND
31 INDUSTRY SHALL INCLUDE AN APPROPRIATION FROM THE WORKERS'

1 **COMPENSATION COMMISSION TO COVER THE COST OF ADMINISTERING THIS**
2 **SUBTITLE.**

3 **(B) THE WORKERS' COMPENSATION COMMISSION SHALL PAY THE**
4 **COST OF ADMINISTERING THIS SUBTITLE FROM MONEY THAT THE COMMISSION**
5 **RECEIVES UNDER § 9-316 OF THIS ARTICLE.**

6 **3-919.**

7 **(A) THE COMMISSIONER SHALL PREPARE AN ANNUAL REPORT FOR THE**
8 **SECRETARY ON THE ADMINISTRATION AND ENFORCEMENT OF THIS SUBTITLE,**
9 **THAT SHALL INCLUDE:**

10 **(1) THE NUMBER AND NATURE OF COMPLAINTS RECEIVED;**

11 **(2) THE NUMBER OF INVESTIGATIONS CONDUCTED;**

12 **(3) THE NUMBER OF CITATIONS ISSUED;**

13 **(4) THE NUMBER OF INFORMAL RESOLUTIONS OF THE**
14 **CITATIONS;**

15 **(5) THE NUMBER OF FINAL ADMINISTRATIVE ORDERS, WITH A**
16 **DESCRIPTION, THAT SHALL INCLUDE:**

17 **(I) WHETHER THE ALLEGED VIOLATION WAS FOUND; AND**

18 **(II) WHETHER THE ORDER AFFIRMED OR OVERTURNED A**
19 **PROPOSED DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS;**

20 **(6) THE NUMBER OF ORDERS OF THE COMMISSIONER REVIEWED**
21 **BY THE SECRETARY AND WHETHER THEY WERE AFFIRMED OR OVERTURNED;**
22 **AND**

23 **(7) THE NUMBER OF REQUESTS FOR JUDICIAL REVIEW OF**
24 **ADMINISTRATIVE ORDERS AND WHETHER THE ORDERS WERE AFFIRMED OR**
25 **OVERTURNED.**

26 **(B) THE COMMISSIONER'S REPORT SHALL BE A PUBLIC RECORD.**

27 **8-201.**

28 **(A) [Except as otherwise provided in this subtitle, employment is]**
29 **EMPLOYMENT IS PRESUMED TO BE covered employment if:**

1 (1) regardless of whether the employment is based on the common law
2 relation of master and servant, the employment is performed:

3 (i) for wages; or

4 (ii) under a contract of hire that is written or oral or express or
5 implied; and

6 (2) the employment is performed in accordance with § 8-202 of this
7 subtitle.

8 (B) TO OVERCOME THE PRESUMPTION OF EMPLOYMENT, AN
9 EMPLOYING UNIT SHALL ESTABLISH THAT THE PERSON PERFORMING SERVICES
10 IS AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH § 8-205 OF THIS
11 SUBTITLE OR IS SPECIFICALLY EXEMPTED UNDER THIS SUBTITLE.

12 **8-201.1.**

13 (A) IN THIS SECTION, “KNOWINGLY” MEANS HAVING ACTUAL
14 KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE
15 TRUTH.

16 (B) AN EMPLOYER MAY NOT MISCLASSIFY AN EMPLOYEE AS AN
17 INDEPENDENT CONTRACTOR.

18 (C) WHERE THE SECRETARY DETERMINES THAT AN EMPLOYING UNIT
19 HAS MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR, ANY
20 AND ALL CONTRIBUTION OR REIMBURSEMENT PAYMENTS RESULTING FROM
21 THE MISCLASSIFICATION THAT ARE DUE AND UNPAID SHALL ACCRUE INTEREST
22 AT THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE FIRST DUE
23 DATE FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE SECRETARY
24 RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF CONTRIBUTIONS AND
25 INTEREST.

26 (D) WHERE THE SECRETARY DETERMINES THAT AN EMPLOYING UNIT
27 HAS KNOWINGLY MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT
28 CONTRACTOR, THE EMPLOYING UNIT SHALL BE SUBJECT TO A CIVIL PENALTY
29 OF NOT MORE THAN \$5,000 PER EMPLOYEE.

30 (E) (1) A PERSON MAY NOT KNOWINGLY ADVISE AN EMPLOYING UNIT
31 OR A PROSPECTIVE EMPLOYING UNIT TO TAKE ACTION FOR THE PURPOSES OF
32 VIOLATING THIS SECTION.

1 **(2) A PERSON FOUND IN VIOLATION OF THIS SUBSECTION SHALL**
2 **BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$20,000.**

3 **(F) AN EMPLOYING UNIT FOUND TO HAVE KNOWINGLY VIOLATED THIS**
4 **SECTION WHO HAS ALSO BEEN FOUND PREVIOUSLY TO HAVE KNOWINGLY**
5 **VIOLATED THIS SECTION BY A FINAL ORDER OF A COURT OR ADMINISTRATIVE**
6 **UNIT MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH**
7 **IN SUBSECTION (D) OF THIS SECTION FOR THE NEW VIOLATION.**

8 **(G) (1) AN EMPLOYING UNIT MAY BE ASSESSED CIVIL PENALTIES BY**
9 **ONLY ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME**
10 **ACTIONS CONSTITUTING A KNOWING MISCLASSIFICATION OF AN EMPLOYEE.**

11 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN**
12 **EMPLOYING UNIT MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST**
13 **DUE, AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS**
14 **BY ORDERS OF A COURT, THE SECRETARY, AND ALL OTHER RELEVANT**
15 **ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE WORKERS'**
16 **COMPENSATION COMMISSION, THE INSURANCE ADMINISTRATION, AND THE**
17 **DIVISION OF LABOR AND INDUSTRY.**

18 **(H) WHERE THE SECRETARY DETERMINES THAT AN EMPLOYING UNIT**
19 **HAS MISCLASSIFIED AN EMPLOYEE, THE SECRETARY SHALL PROMPTLY NOTIFY**
20 **THE WORKERS' COMPENSATION COMMISSION, THE DIVISION OF LABOR AND**
21 **INDUSTRY, THE INSURANCE ADMINISTRATION, AND THE COMPTROLLER.**

22 **(I) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE**
23 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE**
24 **DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE**
25 **COMPTROLLER, THE INSURANCE ADMINISTRATION, AND OTHER STATE**
26 **AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING ANY**
27 **SUSPECTED VIOLATION OF THIS TITLE.**

28 **(J) THE SECRETARY MAY ADOPT REGULATIONS TO CARRY OUT THIS**
29 **SECTION.**

30 8-628.

31 **[A] EXCEPT AS PROVIDED IN § 8-201.1 OF THIS TITLE, A contribution or**
32 **reimbursement payment that is due and unpaid shall accrue interest at the rate of**
33 **1.5% per month or part of a month from the date on which it is due until the Secretary**
34 **receives the contribution or payment in lieu of contributions and the interest.**

35 9-202.

1 (a) [Except as otherwise provided, an] **AN** individual, including a minor, is
2 **PRESUMED TO BE** a covered employee while in the service of an employer under an
3 express or implied contract of apprenticeship or hire.

4 (b) A minor may be a covered employee under this section even if the minor
5 is employed unlawfully.

6 (c) **TO OVERCOME THE PRESUMPTION OF COVERED EMPLOYMENT, AN**
7 **EMPLOYER SHALL ESTABLISH THAT THE INDIVIDUAL PERFORMING SERVICES IS**
8 **AN INDEPENDENT CONTRACTOR IN ACCORDANCE WITH THE COMMON LAW OR IS**
9 **SPECIFICALLY EXEMPTED FROM COVERED EMPLOYMENT UNDER THIS**
10 **SUBTITLE.**

11 **9-402.1.**

12 (A) **IN THIS SECTION, “KNOWINGLY” MEANS HAVING ACTUAL**
13 **KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE**
14 **TRUTH.**

15 (B) **AN EMPLOYER MAY NOT MISCLASSIFY AN EMPLOYEE AS AN**
16 **INDEPENDENT CONTRACTOR.**

17 (C) **IF THE COMMISSION DETERMINES THAT AN EMPLOYER**
18 **MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR THE**
19 **COMMISSION SHALL ORDER THE EMPLOYER TO SECURE COMPENSATION FOR**
20 **THE COVERED EMPLOYEE IN ACCORDANCE WITH § 9-407 OF THIS SUBTITLE.**

21 (D) **IF THE COMMISSION DETERMINES THAT AN EMPLOYER KNOWINGLY**
22 **MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR, THE**
23 **COMMISSION SHALL, IN CONFORMANCE WITH § 9-310 OF THIS TITLE, ASSESS A**
24 **CIVIL PENALTY OF NOT MORE THAN \$5,000.**

25 (E) (1) **A PERSON MAY NOT KNOWINGLY ADVISE AN EMPLOYER TO**
26 **TAKE ACTION FOR THE PURPOSE OF VIOLATING THIS SECTION.**

27 (2) **A PERSON FOUND IN VIOLATION OF THIS SUBSECTION SHALL**
28 **BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$20,000.**

29 (F) **AN EMPLOYER FOUND TO HAVE KNOWINGLY VIOLATED THIS**
30 **SECTION WHO HAS ALSO BEEN FOUND PREVIOUSLY TO HAVE KNOWINGLY**
31 **VIOLATED THIS SECTION BY A FINAL ORDER OF A COURT OR ADMINISTRATIVE**
32 **UNIT MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH**
33 **IN SUBSECTION (D) OF THIS SECTION FOR THE NEW VIOLATION.**

1 **(G) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES BY ONLY**
2 **ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME ACTIONS**
3 **CONSTITUTING A KNOWING MISCLASSIFICATION OF AN EMPLOYEE.**

4 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN**
5 **EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,**
6 **AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY**
7 **ORDERS OF A COURT, THE COMMISSION, AND ALL OTHER RELEVANT**
8 **ADMINISTRATIVE UNITS, INCLUDING THE COMPTROLLER, THE OFFICE OF**
9 **UNEMPLOYMENT INSURANCE, THE INSURANCE ADMINISTRATION, AND THE**
10 **DIVISION OF LABOR AND INDUSTRY.**

11 **(H) WHERE THE COMMISSION DETERMINES THAT AN EMPLOYER HAS**
12 **MISCLASSIFIED AN EMPLOYEE, THE COMMISSION SHALL PROMPTLY NOTIFY**
13 **THE OFFICE OF UNEMPLOYMENT INSURANCE, THE DIVISION OF LABOR AND**
14 **INDUSTRY, THE INSURER, IF ANY, THE INSURANCE ADMINISTRATION, AND THE**
15 **COMPTROLLER.**

16 **(I) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE**
17 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE**
18 **DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE**
19 **COMPTROLLER, THE INSURANCE ADMINISTRATION AND OTHER STATE**
20 **AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING ANY**
21 **SUSPECTED VIOLATION OF THIS TITLE.**

22 **(J) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS**
23 **SECTION.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall
25 include in the annual budget for each fiscal year beginning with fiscal year 2011 funds
26 as necessary for the effective administration and enforcement of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That the Commissioner of
28 Labor and Industry shall report to the Governor and, in accordance with § 2-1246 of
29 the State Government Article, the General Assembly on the Commissioner's
30 investigations of complaints of violations of this Act and the outcomes of those
31 investigations including any recommendations by the Commissioner to improve the
32 administration and enforcement of this Act, as well as any other information that the
33 Commissioner determines relevant.

34 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this
35 Act or the application thereof to any person or circumstance is held invalid for any
36 reason in a court of competent jurisdiction, the invalidity does not affect other
37 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 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2009.