

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

Re-referred to: Finance, February 18, 2009

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 30, 2009

CHAPTER _____

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 and evidentiary considerations; prohibiting certain
11 employers from knowingly failing to properly classify individuals who perform
12 work for remuneration paid by the employer; providing certain criteria to be
13 used to determine whether a violation is knowing; requiring the Commissioner
14 to make certain investigations; providing for the confidentiality of certain
15 complaints or statements; authorizing the Commissioner to enter a place of
16 business or work site under certain circumstances and to require certain
17 employers to take certain actions; authorizing the Commissioner to issue a
18 subpoena under certain circumstances and to file a complaint in circuit court
19 under certain circumstances; requiring the Commissioner to issue a citation
20 under certain circumstances; requiring the Commissioner to grant an
21 employer's request for a hearing conducted by the Office of Administrative
22 Hearings to contest a citation; requiring the Commissioner to disclose certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 evidence and information under certain circumstances; providing that the
2 Commissioner has the burden of proof under certain circumstances; authorizing
3 certain judicial review and appeals under certain circumstances; providing for
4 certain penalties for certain violations of this Act; requiring an employer to
5 come into compliance with certain laws; providing that the requirement for
6 compliance with certain laws after certain violations may include requiring an
7 employer to enter into a certain agreement with a certain governmental unit
8 within a certain time period; limiting the time period for which certain
9 payments may be required for compliance with certain laws after certain
10 violations; requiring the Commissioner to provide notice of potential violations
11 of this Act to the Workers' Compensation Commission, the Office of
12 Unemployment Insurance, the Insurance Administration, and the Comptroller's
13 Office under certain circumstances; requiring cooperation under this Act by
14 certain units of State government; authorizing certain individuals who have not
15 been properly classified as employees to bring a civil action for damages against
16 an employer; requiring that a civil action be filed within a certain time period;
17 requiring a court to award an individual or class of individuals certain costs and
18 relief under certain circumstances; prohibiting an employer from discriminating
19 against a person under certain circumstances; prohibiting a person from making
20 certain complaints to the Commissioner; authorizing certain individuals to
21 submit certain complaints alleging discrimination; authorizing the
22 Commissioner to investigate certain complaints and file certain complaints in
23 certain circuit courts; requiring the Commissioner to notify a public body of a
24 citation issued for certain violations by an employer; requiring the public body,
25 on notification, to withhold payment to an employer in a certain amount;
26 ~~requiring the Commissioner to file with the Secretary of State, the Department~~
27 ~~of Budget and Management, and the Department of General Services a list of~~
28 ~~certain violators of this Act; authorizing an employer to request a review by the~~
29 ~~Secretary of Labor, Licensing, and Regulation of the decision to place the~~
30 ~~employer on the list; prohibiting certain employers from entering into a contract~~
31 ~~with a public body under certain circumstances; requiring certain employers to~~
32 ~~retain certain records for a certain period of time; requiring certain employers to~~
33 ~~provide certain individuals notice of their status and classification; prohibiting a~~
34 ~~person from incorporating or assisting in the incorporation of certain entities for~~
35 ~~the purposes of facilitating or evading detection of a violation of this Act;~~
36 ~~prohibiting certain persons from conspiring with, aiding and abetting, assisting,~~
37 ~~advising, or facilitating another person with violating this Act; establishing~~
38 ~~certain civil and administrative penalties under this Act and other laws under~~
39 ~~the jurisdiction of the Commissioner; prohibiting a person from taking certain~~
40 ~~actions maliciously or in bad faith; authorizing recovery of attorneys' fees under~~
41 ~~certain circumstances; requiring certain penalties to be paid into the General~~
42 ~~Fund of the State; requiring the Commissioner to prepare certain reports;~~
43 ~~requiring the Commissioner to adopt regulations to carry out certain provisions~~
44 ~~of this Act; establishing certain unemployment insurance penalties for~~
45 ~~employers that ~~misclassify~~ fail to properly classify employees in violation of this~~
46 ~~Act; authorizing the Secretary of Labor, Licensing, and Regulation to adopt~~
47 ~~certain regulations; creating certain presumptions under the unemployment~~
48 ~~insurance law and workers' compensation law; requiring the Secretary of Labor,~~

1 Licensing, and Regulation to consider certain evidence that an employer did not
 2 knowingly fail to properly classify an individual; requiring an employing unit
 3 that has knowingly failed to properly classify an employee as an independent
 4 contractor to pay at a certain rate certain unemployment insurance
 5 contributions; prohibiting an employer from ~~misclassifying~~ failing to properly
 6 classify an employee as an independent contractor for purposes of workers’
 7 compensation; requiring the Workers’ Compensation Commission to pay certain
 8 costs; authorizing the Workers’ Compensation Commission to order certain
 9 remedies if an employer ~~misclassifies~~ fails to properly classify an employee;
 10 authorizing the Workers’ Compensation Commission to adopt certain
 11 regulations; defining certain terms; providing for certain funding; making
 12 certain provisions of this Act severable; prohibiting the proposal of emergency
 13 regulations under this Act as emergency regulations; and generally relating to
 14 the failure to properly classify an individual as an employee.

15 BY repealing and reenacting, with amendments,
 16 Article – Labor and Employment
 17 Section 2–107(g), 3–102(a), 3–103, 3–104, 8–201, 8–205, 8–628, 9–202, and
 18 9–316(b)
 19 Annotated Code of Maryland
 20 (2008 Replacement Volume)

21 BY repealing and reenacting, without amendments,
 22 Article – Labor and Employment
 23 Section 3–101
 24 Annotated Code of Maryland
 25 (2008 Replacement Volume)

26 ~~BY repealing and reenacting, with amendments,~~
 27 ~~Article – Labor and Employment~~
 28 ~~Section 3–102(a), 3–103, 3–104, 8–201, 8–628, and 9–202~~
 29 ~~Annotated Code of Maryland~~
 30 ~~(2008 Replacement Volume)~~

31 BY adding to
 32 Article – Labor and Employment
 33 Section 3–901 through ~~3–919~~ 3–920 to be under the new subtitle “Subtitle 9.
 34 Workplace Fraud”; 8–201.1, 8–610.1, 9–315.1, and 9–402.1
 35 Annotated Code of Maryland
 36 (2008 Replacement Volume)

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

39 **Article – Labor and Employment**

40 2–107.

1 (g) [For] **NOTWITHSTANDING THE FUNDING PROVISIONS OF ~~§ 3-918~~**
 2 **§ 3-919 OF THIS ARTICLE, FOR** fiscal year 2007 and for each subsequent fiscal year,
 3 the Governor shall include in the annual budget bill submitted to the General
 4 Assembly an appropriation for the Division of Labor and Industry sufficient to
 5 implement the provisions of this section, including amounts not less than:

6 (1) \$315,000 for implementation of the Employment Standards Service
 7 Unit in the Division; and

8 (2) \$385,000 for implementation of the Prevailing Wage Unit in the
 9 Division.

10 3-101.

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

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

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

14 (2) “Employ” includes:

15 (i) allowing an individual to work; and

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

17 3-102.

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

19 (1) enforce Subtitle 2 of this title;

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

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

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

23 3-103.

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

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

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

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

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

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

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

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

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

15 3-104.

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

18 **SUBTITLE 9. WORKPLACE FRAUD.**

19 **3-901.**

20 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
21 **INDICATED.**

22 (B) **"CONSTRUCTION SERVICES" INCLUDES THE FOLLOWING SERVICES**
23 **PROVIDED IN CONNECTION WITH REAL PROPERTY:**

24 (1) **BUILDING;**

25 (2) **RECONSTRUCTING;**

26 (3) **IMPROVING;**

27 (4) **ENLARGING;**

28 (5) **PAINING ~~AND DECORATING;~~**

1 (6) ALTERING;

2 (7) MAINTAINING; AND

3 (8) REPAIRING.

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

6 (D) “EXEMPT PERSON” MEANS AN INDIVIDUAL WHO:

7 (1) PERFORMS SERVICES IN A PERSONAL CAPACITY AND
8 EMPLOYS NO INDIVIDUALS OTHER THAN:

9 (I) A SPOUSE OF THE EXEMPT PERSON;

10 (II) CHILDREN OF THE EXEMPT PERSON; OR

11 (III) PARENTS OF THE EXEMPT PERSON;

12 (2) PERFORMS SERVICES FREE FROM DIRECTION AND CONTROL
13 OVER THE MEANS AND MANNER OF PROVIDING THE SERVICES, SUBJECT ONLY
14 TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES ARE PROVIDED
15 TO SPECIFY THE DESIRED RESULT;

16 (3) FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO
17 PROVIDE THE SERVICE;

18 (4) OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE
19 FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES:

20 (I) IN WHICH THE INDIVIDUAL:

21 1. OWNS ALL OF THE ASSETS AND PROFITS OF THE
22 BUSINESS; AND

23 2. HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR
24 ALL OF THE DEBTS AND LIABILITIES OF THE BUSINESS, UNLESS THE BUSINESS
25 IS ORGANIZED AS A SINGLE-OWNED CORPORATE ENTITY, TO WHICH SOLE,
26 UNLIMITED PERSONAL LIABILITY DOES NOT APPLY; AND

27 (II) FOR WHICH:

1 **1. THE INDIVIDUAL DOES NOT PAY TAXES FOR THE**
2 **BUSINESS SEPARATELY BUT REPORTS BUSINESS INCOME AND LOSSES ON THE**
3 **INDIVIDUAL'S PERSONAL TAX RETURN; AND**

4 **2. IF THE BUSINESS IS ORGANIZED AS A CORPORATE**
5 **ENTITY AND THE INDIVIDUAL OTHERWISE QUALIFIES AS AN EXEMPT PERSON**
6 **UNDER THIS SUBSECTION, THE INDIVIDUAL FILES A SEPARATE FEDERAL**
7 **INFORMATIONAL TAX RETURN FOR THE ENTITY AS REQUIRED BY LAW;**

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 **(D) (E) "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE,**
14 **DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE TRUTH.**

15 **(E) (F) "LANDSCAPING SERVICES" INCLUDES THE FOLLOWING**
16 **SERVICES:**

17 **(1) GARDEN MAINTENANCE AND PLANTING;**

18 **(2) LAWN CARE INCLUDING FERTILIZING, MOWING, MULCHING,**
19 **SEEDING, AND SPRAYING;**

20 **(3) SEEDING AND MOWING OF HIGHWAY STRIPS;**

21 **(4) SOD LAYING;**

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

23 **(6) ORNAMENTAL BUSH PLANTING, PRUNING, BRACING,**
24 **SPRAYING, AND REMOVAL; AND**

25 **(7) ORNAMENTAL TREE PLANTING, PRUNING, BRACING,**
26 **SPRAYING, AND REMOVAL.**

27 **~~(F) "PACKAGE DELIVERY SERVICES" MEANS PICKING UP INDIVIDUAL~~**
28 **~~PACKAGES FROM A SENDER OR DELIVERING INDIVIDUAL PACKAGES TO A~~**
29 **~~RECIPIENT, WHERE MORE THAN HALF OF THE PACKAGES TYPICALLY CARRIED~~**
30 **~~WEIGH 150 POUNDS OR LESS.~~**

1 (G) (1) "PLACE OF BUSINESS" MEANS THE OFFICE OR
2 HEADQUARTERS OF THE EMPLOYER.

3 (2) "PLACE OF BUSINESS" DOES NOT INCLUDE A WORK SITE AT
4 WHICH THE EMPLOYER HAS BEEN CONTRACTED TO PERFORM SERVICES.

5 ~~(G)~~ (H) "PUBLIC BODY" MEANS:

6 (1) THE STATE;

7 (2) A UNIT OF STATE GOVERNMENT OR AN INSTRUMENTALITY OF
8 THE STATE; OR

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

12 ~~(H) "SOLE PROPRIETOR" MEANS AN INDIVIDUAL WHO:~~

13 ~~(1) PERFORMS SERVICES IN A PERSONAL CAPACITY AND~~
14 ~~EMPLOYS NO OTHER INDIVIDUALS;~~

15 ~~(2) PERFORMS SERVICES FREE FROM THE DIRECTION AND~~
16 ~~CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE,~~
17 ~~SUBJECT ONLY TO THE RIGHT OF THE PERSON OR ENTITY FOR WHOM SERVICES~~
18 ~~ARE PROVIDED TO SPECIFY THE DESIRED RESULT;~~

19 ~~(3) FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO~~
20 ~~PROVIDE THE SERVICE;~~

21 ~~(4) OPERATES A BUSINESS THAT IS CONSIDERED INSEPARABLE~~
22 ~~FROM THE INDIVIDUAL FOR PURPOSES OF TAXES, PROFITS, AND LIABILITIES IN~~
23 ~~WHICH THE INDIVIDUAL;~~

24 ~~(I) HAS SOLE, UNLIMITED, PERSONAL LIABILITY FOR ALL~~
25 ~~OF THE DEBTS AND LIABILITIES OF THE BUSINESS;~~

26 ~~(II) DOES NOT PAY TAXES FOR THE BUSINESS SEPARATELY,~~
27 ~~BUT REPORTS BUSINESS INCOME AND LOSSES ON THE INDIVIDUAL'S PERSONAL~~
28 ~~TAX RETURN; AND~~

29 ~~(III) OWNS ALL OF THE ASSETS AND PROFITS OF THE~~
30 ~~BUSINESS;~~

1 ~~(5) EXERCISES COMPLETE CONTROL OVER THE MANAGEMENT~~
 2 ~~AND OPERATIONS OF THE BUSINESS; AND~~

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

6 **3-902.**

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

8 (1) **CONSTRUCTION SERVICES; AND**

9 (2) **LANDSCAPING SERVICES; AND**

10 ~~(3) **PACKAGE DELIVERY SERVICES.**~~

11 **3-903.**

12 (A) **AN EMPLOYER MAY NOT FAIL TO PROPERLY CLASSIFY AN**
 13 **INDIVIDUAL WHO PERFORMS WORK FOR REMUNERATION PAID BY THE**
 14 **EMPLOYER.**

15 (B) **AN EMPLOYER HAS FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL**
 16 **WHEN AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS AS DETERMINED**
 17 **UNDER SUBSECTION (C) OF THIS SECTION BUT THE EMPLOYER HAS NOT**
 18 **CLASSIFIED THE INDIVIDUAL AS AN EMPLOYEE.**

19 (C) (1) **FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE ONLY,**
 20 **WORK PERFORMED BY AN INDIVIDUAL FOR REMUNERATION PAID BY AN**
 21 **EMPLOYER SHALL BE PRESUMED TO CREATE AN EMPLOYER-EMPLOYEE**
 22 **RELATIONSHIP, UNLESS:**

23 (I) **THE INDIVIDUAL IS ~~A SOLE PROPRIETOR~~ AN EXEMPT**
 24 **PERSON; OR**

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

26 1. **THE INDIVIDUAL WHO PERFORMS THE WORK IS**
 27 **FREE FROM CONTROL AND DIRECTION OVER ITS PERFORMANCE BOTH IN FACT**
 28 **AND UNDER THE CONTRACT;**

29 2. **THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN**
 30 **AN INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT**
 31 **INVOLVED IN THE WORK; AND**

1 **3. THE WORK IS:**

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

4 **B. PERFORMED OUTSIDE OF ANY PLACE OF**
5 **BUSINESS OF THE PERSON FOR WHOM THE WORK IS PERFORMED.**

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

9 **(I) THE INDIVIDUAL PERFORMS THE WORK OFF THE**
10 **EMPLOYER'S PREMISES;**

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

13 **(III) THE WORK PERFORMED IS UNRELATED TO THE**
14 **EMPLOYER'S BUSINESS.**

15 **(3) BY CONTRACT, AN EMPLOYER MAY ENGAGE ANOTHER**
16 **BUSINESS ENTITY, WHICH MAY HAVE ITS OWN EMPLOYEES, TO DO THE SAME**
17 **TYPE OF WORK IN WHICH THE EMPLOYER ENGAGES, AT THE SAME LOCATION**
18 **WHERE THE EMPLOYER IS WORKING, WITHOUT ESTABLISHING AN**
19 **EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE TWO CONTRACTING**
20 **ENTITIES.**

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

24 **3-904.**

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

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

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

1 **A. WITHHOLDS, REPORTS, AND REMITS PAYROLL**
2 **TAXES ON BEHALF OF ALL INDIVIDUALS WORKING FOR THE INDEPENDENT**
3 **CONTRACTOR;**

4 **B. PAYS UNEMPLOYMENT INSURANCE TAXES FOR**
5 **ALL INDIVIDUALS WORKING FOR THE INDEPENDENT CONTRACTOR; AND**

6 **C. MAINTAINS WORKERS' COMPENSATION**
7 **INSURANCE; AND**

8 **(II) PROVIDED TO THE EXEMPT PERSON OR INDEPENDENT**
9 **CONTRACTOR A WRITTEN NOTICE AS REQUIRED BY § 3-914 OF THIS SUBTITLE;**
10 **OR**

11 **(2) THE EMPLOYER:**

12 **(I) 1. CLASSIFIES ALL WORKERS WHO PERFORM THE**
13 **SAME OR SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER AS**
14 **INDEPENDENT CONTRACTORS; AND**

15 **2. REPORTS THE INCOME OF THE WORKERS TO THE**
16 **INTERNAL REVENUE SERVICE AS REQUIRED BY FEDERAL LAW; AND**

17 **(II) HAS RECEIVED A DETERMINATION FROM THE INTERNAL**
18 **REVENUE SERVICE THAT THE INDIVIDUAL OR A WORKER WHO PERFORMS THE**
19 **SAME OR SUBSTANTIALLY THE SAME TASK AS THE INDIVIDUAL IS AN**
20 **INDEPENDENT CONTRACTOR.**

21 **(D) THE COMMISSIONER SHALL ADOPT REGULATIONS TO PROVIDE**
22 **GUIDANCE AS TO WHAT CONSTITUTES THE EVIDENCE RELEVANT TO THE**
23 **DETERMINATION OF WHETHER AN ~~EMPLOYER'S FAILURE~~ EMPLOYER**
24 **KNOWINGLY FAILED TO PROPERLY CLASSIFY ~~AS KNOWING~~ AN EMPLOYEE.**

25 **3-905.**

26 **(A) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO**
27 **DETERMINE COMPLIANCE WITH THIS SUBTITLE AND REGULATIONS ADOPTED**
28 **UNDER THIS SUBTITLE.**

29 **(B) (1) ANY WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY**
30 **~~AN INDIVIDUAL~~ A PERSON AS PART OF AN INVESTIGATION UNDER THIS SECTION**
31 **IS CONFIDENTIAL AND MAY NOT BE DISCLOSED WITHOUT THE CONSENT OF THE**
32 **~~INDIVIDUAL~~ PERSON UNTIL THE INVESTIGATION IS CONCLUDED AND A**
33 **CITATION IS ISSUED.**

1 **(2) ANY WRITTEN OR ORAL STATEMENT MADE BY AN INDIVIDUAL**
2 **ALLEGED TO BE EMPLOYED BY THE RESPONDENT AS PART OF AN**
3 **INVESTIGATION UNDER THIS SECTION IS CONFIDENTIAL AND MAY NOT BE**
4 **DISCLOSED WITHOUT THE CONSENT OF THE INDIVIDUAL.**

5 **(C) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS OR WORK**
6 **SITE TO:**

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

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

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

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

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

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

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

20 **(E) AN EMPLOYER THAT FAILS TO PRODUCE RECORDS OR A WRITTEN**
21 **STATEMENT UNDER SUBSECTION (D) OF THIS SECTION WITHIN ~~5~~ 15 BUSINESS**
22 **DAYS ~~OF~~ AFTER THE COMMISSIONER'S REQUEST SHALL BE SUBJECT TO A FINE**
23 **NOT EXCEEDING \$500 PER DAY FOR EACH DAY THE RECORDS ARE NOT**
24 **PRODUCED.**

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

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

32 **3-906.**

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

5 (B) EACH CITATION SHALL:

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

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

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

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

14 (1) A COPY OF THE CITATION; AND

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

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

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

22 (F) IF THE EMPLOYER REQUESTS A HEARING, THE COMMISSIONER
23 SHALL DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE
24 AUTHORITY TO HOLD A HEARING AND ISSUE ~~PROPOSED~~ FINDINGS OF FACT ~~AND~~,
25 CONCLUSIONS OF LAW, AND ~~A PROPOSED AN ORDER,~~ AND ASSESS A PENALTY
26 UNDER § 3-909 OF THIS SUBTITLE IN ACCORDANCE WITH TITLE 10, SUBTITLE 2
27 OF THE STATE GOVERNMENT ARTICLE.

28 (G) WITHIN 15 DAYS AFTER A REQUEST, IN ACCORDANCE WITH TITLE
29 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE AND THE APPLICABLE
30 REGULATIONS OF THE DEPARTMENT AND THE OFFICE OF ADMINISTRATIVE
31 HEARINGS, THE COMMISSIONER SHALL PROVIDE COPIES OF ALL RELEVANT
32 EVIDENCE, INCLUDING A LIST OF POTENTIAL WITNESSES, ON WHICH THE
33 COMMISSIONER INTENDS TO RELY AT ANY ADMINISTRATIVE HEARING UNDER
34 THIS SUBTITLE.

1 **(H) THE COMMISSIONER HAS THE BURDEN OF PROOF TO SHOW THAT**
 2 **AN EMPLOYER HAS KNOWINGLY FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL**
 3 **AS AN EMPLOYEE.**

4 ~~**(G) (I) A PROPOSED DECISION OF AN ADMINISTRATIVE LAW JUDGE**~~
 5 ~~**ISSUED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE**~~
 6 ~~**GOVERNMENT ARTICLE SHALL BECOME A FINAL ORDER OF THE**~~
 7 ~~**COMMISSIONER UNLESS, WITHIN 15 DAYS OF THE ISSUANCE OF THE PROPOSED**~~
 8 ~~**DECISION;**~~

9 ~~**(1) THE COMMISSIONER ORDERS REVIEW OF THE PROPOSED**~~
 10 ~~**DECISION; OR**~~

11 ~~**(2) AN EMPLOYER SUBMITS TO THE COMMISSIONER A WRITTEN**~~
 12 ~~**REQUEST FOR REVIEW OF THE PROPOSED DECISION.**~~

13 ~~**(H) AFTER REVIEW OF THE PROPOSED DECISION UNDER SUBSECTION**~~
 14 ~~**(G) OF THIS SECTION, WITH OR WITHOUT A HEARING ON THE RECORD, THE**~~
 15 ~~**COMMISSIONER SHALL ISSUE AN ORDER THAT, ON THE BASIS OF FINDINGS OF**~~
 16 ~~**FACT AND CONCLUSIONS OF LAW, AFFIRMS, MODIFIES, OR VACATES THE**~~
 17 ~~**PROPOSED DECISION.**~~

18 **(J) ANY PARTY AGGRIEVED BY A FINAL ORDER OF THE COMMISSIONER**
 19 **UNDER SUBSECTION (I) OF THIS SECTION MAY SEEK JUDICIAL REVIEW AND**
 20 **APPEAL UNDER §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.**

21 **3-907.**

22 **(A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
 23 **AN EMPLOYER FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN**
 24 **EMPLOYEE IN VIOLATION OF § 3-903 OF THIS SUBTITLE, OR KNOWINGLY FAILED**
 25 **TO PROPERLY CLASSIFY AN EMPLOYEE IN VIOLATION OF § 3-904 OF THIS**
 26 **SUBTITLE, AND ISSUES A CITATION, THE COMMISSIONER SHALL NOTIFY THE**
 27 **COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE INSURANCE**
 28 **ADMINISTRATION, AND THE WORKERS' COMPENSATION COMMISSION TO**
 29 **ENABLE THESE AGENCIES TO ASSURE AN EMPLOYER'S COMPLIANCE WITH**
 30 **THEIR LAWS, UTILIZING THEIR OWN DEFINITIONS, STANDARDS, AND**
 31 **PROCEDURES.**

32 **(B) (1) AN EMPLOYER FOUND IN VIOLATION OF § 3-903 ~~OR § 3-904~~**
 33 **OF THIS SUBTITLE BY A FINAL ORDER OF A COURT OR ~~THE COMMISSIONER~~ AN**
 34 **ADMINISTRATIVE UNIT SHALL BE REQUIRED, WITHIN 30 45 DAYS ~~OF~~ AFTER THE**
 35 **FINAL ORDER:**

1 ~~(1)~~ (I) TO PAY RESTITUTION TO ANY INDIVIDUAL NOT
2 PROPERLY CLASSIFIED; AND

3 ~~(2)~~ (II) TO OTHERWISE COME INTO COMPLIANCE WITH ALL
4 APPLICABLE LABOR LAWS, INCLUDING THOSE RELATED TO INCOME TAX
5 WITHHOLDING, UNEMPLOYMENT INSURANCE, WAGE LAWS, AND WORKERS'
6 COMPENSATION.

7 (2) THE REQUIREMENT FOR COMPLIANCE WITH APPLICABLE
8 LABOR LAWS UNDER SUBSECTION (B)(1)(II) OF THIS SECTION MAY INCLUDE
9 REQUIRING THE EMPLOYER TO ENTER INTO AN AGREEMENT, WITHIN 45 DAYS
10 AFTER THE FINAL ORDER, WITH A GOVERNMENTAL UNIT FOR PAYMENT OF ANY
11 AMOUNTS OWED BY THE EMPLOYER TO THE UNIT.

12 (3) THE REQUIREMENT FOR COMPLIANCE WITH APPLICABLE
13 LABOR LAWS UNDER PARAGRAPH (B)(1)(II) OF THIS SECTION:

14 (I) MAY NOT REQUIRE PAYMENTS FOR MORE THAN A
15 12-MONTH PERIOD; AND

16 (II) MAY NOT REQUIRE PAYMENTS DUE FOR A PERIOD
17 BEFORE THE 12-MONTH PERIOD BEFORE THE CITATION WAS ISSUED.

18 (C) AN EMPLOYER FOUND IN VIOLATION OF § 3-904 OF THIS SUBTITLE
19 BY A FINAL ORDER OF A COURT OR AN ADMINISTRATIVE UNIT SHALL BE
20 REQUIRED, WITHIN 45 DAYS AFTER THE FINAL ORDER:

21 (1) TO PAY RESTITUTION TO ANY INDIVIDUAL NOT PROPERLY
22 CLASSIFIED; AND

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

27 **3-908.**

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

32 (B) (1) AN EMPLOYER IN VIOLATION OF § 3-903 OF THIS SUBTITLE
33 WHO FAILS TO COME INTO TIMELY COMPLIANCE WITH ALL APPLICABLE LABOR
34 LAWS AS REQUIRED BY § 3-907(B) OF THIS SUBTITLE SHALL BE ASSESSED A

1 CIVIL PENALTY OF UP TO ~~\$3,000~~ \$1,000 FOR EACH EMPLOYEE FOR WHOM THE
2 EMPLOYER IS NOT IN COMPLIANCE.

3 (2) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
4 COMMISSIONER SHALL CONSIDER THE FACTORS SET FORTH IN § 3-909(B) OF
5 THIS SUBTITLE.

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) AND (C) OF THIS
10 SUBTITLE.

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

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

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

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

25 **3-909.**

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

30 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
31 COMMISSIONER OR THE ADMINISTRATIVE LAW JUDGE SHALL CONSIDER:

32 (1) THE GRAVITY OF THE VIOLATION;

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

1 (3) THE EMPLOYER'S GOOD FAITH;

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

4 (5) WHETHER THE EMPLOYER:

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

9 1. ANY PROVISION OF ~~THE LABOR AND~~
10 ~~EMPLOYMENT ARTICLE~~ THIS ARTICLE;

11 2. THE STATE PREVAILING WAGE LAW, UNDER §§
12 17-221 AND 17-222 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; OR

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

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

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

23 (D) AN EMPLOYER WHO HAS BEEN FOUND BY A FINAL ORDER OF A
24 COURT OR AN ADMINISTRATIVE UNIT TO HAVE VIOLATED § 3-904 OF THIS
25 SUBTITLE THREE OR MORE TIMES MAY BE ASSESSED AN ADMINISTRATIVE
26 PENALTY OF UP TO \$20,000 FOR EACH EMPLOYEE.

27 ~~(D)~~ (E) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES UNDER
28 THIS SECTION OR § 8-201.1 OR § 9-402.1 OF THIS ARTICLE BY ONLY ONE FINAL
29 ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME ACTIONS
30 CONSTITUTING A VIOLATION OF THIS SUBTITLE.

31 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, AN
32 EMPLOYER MAY BE ORDERED TO MAKE RESTITUTION, PAY ANY INTEREST DUE,
33 AND OTHERWISE COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS BY
34 ORDERS OF A COURT AND ALL RELEVANT ADMINISTRATIVE UNITS, INCLUDING

1 THE COMPTROLLER, THE OFFICE OF UNEMPLOYMENT INSURANCE, THE
2 INSURANCE ADMINISTRATION, AND THE WORKERS' COMPENSATION
3 COMMISSION.

4 ~~(E)~~ (F) ANY PENALTY ISSUED UNDER THIS SECTION AGAINST AN
5 EMPLOYER SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR
6 BUSINESS ENTITY THAT:

7 (1) HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS
8 THE EMPLOYER AGAINST WHOM THE PENALTY WAS ASSESSED, IF THE
9 PRINCIPAL OR OFFICER KNOWINGLY PARTICIPATED IN THE VIOLATION FOR
10 WHICH THE PENALTY WAS IMPOSED; AND

11 (2) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR
12 ACTIVITY.

13 **3-910.**

14 AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE
15 DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE
16 DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE
17 COMPTROLLER, THE MARYLAND INSURANCE ADMINISTRATION, AND OTHER
18 STATE AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING
19 ANY SUSPECTED FAILURE TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
20 EMPLOYEE.

21 **3-911.**

22 (A) (1) ~~NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER THIS~~
23 ~~SUBTITLE, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN~~
24 INDIVIDUAL WHO HAS NOT BEEN PROPERLY CLASSIFIED AS AN EMPLOYEE MAY
25 BRING A CIVIL ACTION FOR ECONOMIC DAMAGES AGAINST THE EMPLOYER FOR
26 ANY VIOLATION OF THIS SUBTITLE.

27 (2) AN INDIVIDUAL MAY NOT BRING A CIVIL ACTION UNDER THIS
28 SECTION IF THE INDIVIDUAL HAS RECEIVED RESTITUTION OR ANY OTHER
29 COMPENSATION UNDER THIS SUBTITLE.

30 (B) AN ACTION FILED UNDER THIS SECTION SHALL BE FILED WITHIN 3
31 YEARS ~~OF~~ AFTER THE DATE THE CAUSE OF ACTION ACCRUES.

32 (C) IF THE COURT DETERMINES THAT AN INDIVIDUAL OR CLASS OF
33 INDIVIDUALS IS ENTITLED TO JUDGMENT IN AN ACTION AGAINST AN EMPLOYER
34 FILED IN ACCORDANCE WITH THIS SECTION, THE COURT MAY AWARD EACH
35 INDIVIDUAL:

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

3 (2) AN ADDITIONAL AMOUNT UP TO THREE TIMES THE AMOUNT
4 OF ANY SUCH DAMAGES, IF THE EMPLOYER KNOWINGLY FAILED TO PROPERLY
5 CLASSIFY THE INDIVIDUAL;

6 (3) REASONABLE COUNSEL FEES AND OTHER COSTS OF THE
7 ACTION; AND

8 (4) ANY OTHER APPROPRIATE RELIEF.

9 **3-912.**

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

12 (1) FILES A COMPLAINT WITH THE EMPLOYER OR THE
13 COMMISSIONER ALLEGING THAT THE EMPLOYER VIOLATED ANY PROVISION OF
14 THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE;

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

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

19 ~~(B) AN INDIVIDUAL MAY NOT:~~

20 ~~(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE~~
21 ~~COMMISSIONER; OR~~

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

24 ~~(B)~~ (1) AN INDIVIDUAL WHO BELIEVES THAT AN EMPLOYER HAS
25 DISCRIMINATED IN ANY MANNER OR TAKEN ADVERSE ACTION AGAINST THE
26 INDIVIDUAL IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT
27 TO THE COMMISSIONER A WRITTEN COMPLAINT THAT ALLEGES THE
28 DISCRIMINATION AND THAT INCLUDES THE SIGNATURE OF THE INDIVIDUAL.

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

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

3 (2) THE COMMISSIONER SHALL PROVIDE THE EMPLOYER WITH
4 AN OPPORTUNITY TO RESPOND TO THE ALLEGATIONS IN THE COMPLAINT.

5 (3) IF, AFTER INVESTIGATION AND CONSIDERATION OF ANY
6 RESPONSE FROM THE EMPLOYER, THE COMMISSIONER DETERMINES THAT AN
7 EMPLOYER OR OTHER PERSON HAS VIOLATED SUBSECTION (A) OF THIS
8 SECTION, THE COMMISSIONER SHALL FILE A COMPLAINT TO ENJOIN THE
9 VIOLATION, TO REINSTATE THE EMPLOYEE TO THE FORMER POSITION WITH
10 BACK PAY, AND TO AWARD ANY OTHER APPROPRIATE DAMAGES OR OTHER
11 RELIEF IN THE CIRCUIT COURT FOR:

12 (I) THE COUNTY IN WHICH THE ALLEGED VIOLATION
13 OCCURRED;

14 (II) THE COUNTY IN WHICH THE EMPLOYER HAS ITS
15 PRINCIPAL OFFICE; OR

16 (III) BALTIMORE CITY.

17 (4) WITHIN 120 DAYS AFTER THE COMMISSIONER RECEIVES A
18 COMPLAINT, THE COMMISSIONER SHALL NOTIFY THE EMPLOYEE OF THE
19 DETERMINATION UNDER THIS SUBSECTION.

20 **3-913.**

21 (A) WHERE, AFTER INVESTIGATION, THE COMMISSIONER ISSUES A
22 CITATION FOR A VIOLATION OF THIS SUBTITLE OR REGULATIONS ADOPTED
23 UNDER THIS SUBTITLE BY AN EMPLOYER ENGAGED IN WORK ON A CONTRACT
24 WITH A PUBLIC BODY, THE COMMISSIONER SHALL PROMPTLY NOTIFY THE
25 PUBLIC BODY.

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

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

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

32 (2) THE PUBLIC BODY SHALL RELEASE:

1 (I) ON ISSUANCE OF A FAVORABLE FINAL ORDER OF A
2 COURT OR AN ADMINISTRATIVE UNIT, THE FULL AMOUNT OF THE WITHHELD
3 FUNDS; AND

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

7 ~~(C) (1) SUBJECT TO THE PROCESS SET FORTH IN THIS SUBSECTION,~~
8 ~~THE COMMISSIONER SHALL FILE WITH THE SECRETARY OF STATE, THE~~
9 ~~DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT OF GENERAL~~
10 ~~SERVICES, AND THE BOARD OF PUBLIC WORKS A LIST OF THE EMPLOYERS WHO~~
11 ~~ARE SUBJECT TO DEBARMENT.~~

12 ~~(2) AN EMPLOYER FOUND IN VIOLATION OF THIS SUBTITLE BY~~
13 ~~MORE THAN TWO FINAL ADMINISTRATIVE OR JUDICIAL ORDERS SHALL BE~~
14 ~~SUBJECT TO DEBARMENT.~~

15 ~~(3) WITHIN 15 DAYS AFTER AN EMPLOYER RECEIVES A FINAL~~
16 ~~ADMINISTRATIVE OR JUDICIAL ORDER FINDING A VIOLATION OF THIS~~
17 ~~SUBTITLE, WHICH TRIGGERS DEBARMENT UNDER THIS SUBSECTION, AN~~
18 ~~EMPLOYER MAY REQUEST A REVIEW BY THE SECRETARY OF WHETHER~~
19 ~~DEBARMENT IS WARRANTED.~~

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

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

26 ~~(6) AN EMPLOYER THAT IS ON THE LIST SHALL BE PROHIBITED~~
27 ~~FROM ENTERING INTO A CONTRACT WITH A PUBLIC BODY DIRECTLY OR~~
28 ~~INDIRECTLY FOR 2 YEARS FROM THE DATE ON WHICH THE EMPLOYER~~
29 ~~APPEARED ON THE LIST.~~

30 ~~(7) A PUBLIC BODY MAY NOT AWARD A CONTRACT TO AN~~
31 ~~EMPLOYER PROHIBITED FROM ENTERING INTO A CONTRACT UNDER THIS~~
32 ~~SUBSECTION.~~

33 ~~(8) THE LIST MAINTAINED IN ACCORDANCE WITH THIS~~
34 ~~SUBSECTION IS A PUBLIC RECORD.~~

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

3 ~~(I) HAS ONE OR MORE OF THE SAME PRINCIPALS OR~~
 4 ~~OFFICERS AS THE EMPLOYER AGAINST WHOM THE DEBARMENT WAS IMPOSED;~~
 5 ~~AND~~

6 ~~(II) IS ENGAGED IN THE SAME OR EQUIVALENT TRADE OR~~
 7 ~~ACTIVITY.~~

8 **3-914.**

9 (A) AN EMPLOYER SHALL KEEP, FOR AT LEAST 3 YEARS, IN OR ABOUT
 10 ITS PLACE OF BUSINESS, RECORDS OF THE EMPLOYER CONTAINING THE
 11 FOLLOWING INFORMATION:

12 (1) THE NAME, ADDRESS, ~~AND~~ OCCUPATION, AND
 13 CLASSIFICATION OF EACH EMPLOYEE OR INDEPENDENT CONTRACTOR;

14 (2) THE RATE OF PAY OF EACH EMPLOYEE OR METHOD OF
 15 PAYMENT FOR THE INDEPENDENT CONTRACTOR;

16 ~~(3) THE CLASSIFICATION OF EACH INDIVIDUAL AS AN EMPLOYEE~~
 17 ~~OR INDEPENDENT CONTRACTOR;~~

18 ~~(4)~~ (3) THE AMOUNT THAT IS PAID EACH PAY PERIOD TO EACH
 19 EMPLOYEE OR, IF APPLICABLE, INDEPENDENT CONTRACTOR;

20 ~~(5)~~ (4) THE HOURS THAT EACH EMPLOYEE OR INDEPENDENT
 21 CONTRACTOR WORKS EACH DAY AND EACH WORKWEEK;

22 ~~(6)~~ (5) FOR ALL INDIVIDUALS WHO ARE NOT CLASSIFIED AS
 23 EMPLOYEES, EVIDENCE THAT EACH INDIVIDUAL IS ~~A SOLE PROPRIETOR~~ AN
 24 EXEMPT PERSON OR AN INDEPENDENT CONTRACTOR OR ITS EMPLOYEE; AND

25 ~~(7)~~ (6) OTHER INFORMATION THAT THE COMMISSIONER
 26 REQUIRES, BY REGULATION, AS NECESSARY TO ENFORCE THIS SUBTITLE.

27 (B) AN EMPLOYER SHALL PROVIDE EACH INDIVIDUAL CLASSIFIED AS
 28 AN INDEPENDENT CONTRACTOR OR ~~SOLE PROPRIETOR~~ EXEMPT PERSON WITH
 29 WRITTEN NOTICE OF THE CLASSIFICATION OF THE INDIVIDUAL AT THE TIME
 30 THE INDIVIDUAL IS HIRED.

31 (C) THE WRITTEN NOTICE SHALL:

1 (1) INCLUDE AN EXPLANATION OF THE IMPLICATIONS OF THE
2 INDIVIDUAL'S CLASSIFICATION AS AN INDEPENDENT CONTRACTOR OR ~~SOLE~~
3 ~~PROPRIETOR~~ EXEMPT PERSON RATHER THAN AS AN EMPLOYEE; AND

4 (2) BE PROVIDED IN ENGLISH AND SPANISH.

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

7 **3-915.**

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

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

18 (C) (1) ~~A~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
19 SUBSECTION, A PERSON THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO A
20 CIVIL PENALTY NOT EXCEEDING \$20,000.

21 (2) A PERSON THAT VIOLATES THIS SECTION MAY NOT BE
22 SUBJECT TO A CIVIL PENALTY UNDER THIS SECTION IF THE PERSON:

23 (I) HOLDS A PROFESSIONAL LICENSE AS A LAWYER OR A
24 CERTIFIED PUBLIC ACCOUNTANT; AND

25 (II) WAS PERFORMING AN ACTIVITY IN THE ORDINARY
26 COURSE OF THAT PERSON'S LICENSE WHEN THE VIOLATION OCCURRED.

27 (3) IF THE PERSON IS EXEMPT FROM SANCTION UNDER
28 PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER SHALL PROMPTLY
29 REFER THE PERSON FOR INVESTIGATION AND POSSIBLE SANCTION TO THE UNIT
30 OF STATE GOVERNMENT THAT HAS REGULATORY JURISDICTION OVER THE
31 BUSINESS ACTIVITIES OF THAT PERSON.

32 (D) THE PROCEDURES GOVERNING INVESTIGATIONS, CITATIONS, AND
33 ADMINISTRATIVE AND JUDICIAL REVIEW OF AN ALLEGED VIOLATION UNDER

1 THIS SECTION SHALL BE THE SAME AS THOSE SET FORTH IN §§ 3-905 AND 3-906
2 OF THIS SUBTITLE.

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

6 **3-916.**

7 (A) **A PERSON MAY NOT:**

8 (1) **MAKE OR CAUSE TO BE MADE A GROUNDLESS OR MALICIOUS**
9 **COMPLAINT TO THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF**
10 **THE COMMISSIONER;**

11 (2) **IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE OR A**
12 **PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE; OR**

13 (3) **IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE**
14 **OR A PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE.**

15 (B) **THE COMMISSIONER SHALL INVESTIGATE ANY ALLEGATIONS THAT**
16 **A PERSON HAS VIOLATED ANY PROVISION OF THIS SECTION.**

17 (C) (1) **IF THE COMMISSIONER DETERMINES THAT A PERSON HAS**
18 **VIOLATED ANY PROVISION OF THIS SECTION, THAT PERSON MAY BE SUBJECT TO**
19 **AN ADMINISTRATIVE PENALTY OF UP TO \$1,000, ASSESSED BY THE**
20 **COMMISSIONER.**

21 (2) **A SANCTION UNDER PARAGRAPH (1) OF THIS SUBSECTION**
22 **SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF § 3-906**
23 **OF THIS SUBTITLE.**

24 (3) **IF THE PERSON FOUND IN VIOLATION OF THIS SECTION IS A**
25 **PERSON ALLEGED TO BE EMPLOYED BY THE RESPONDENT, THE COMMISSIONER**
26 **SHALL DISCLOSE THE IDENTITY OF THE COMPLAINANT.**

27 (D) **ANY PERSON WHO MUST DEFEND AN ACTION TAKEN AS A RESULT OF**
28 **A GROUNDLESS OR MALICIOUS COMPLAINT MAY BE ENTITLED TO RECOVER**
29 **ATTORNEYS' FEES.**

30 ~~**3-916.**~~ **3-917.**

31 **THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT ~~THE~~**
32 **PROVISIONS OF THIS SUBTITLE.**

1 ~~3-917.~~ 3-918.

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

4 ~~3-918.~~ 3-919.

5 (A) THE PROPOSED BUDGET OF THE DIVISION OF LABOR AND
6 INDUSTRY SHALL INCLUDE AN APPROPRIATION FROM THE WORKERS'
7 COMPENSATION COMMISSION TO COVER THE COST OF ADMINISTERING THIS
8 SUBTITLE.

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

12 ~~3-919.~~ 3-920.

13 (A) THE COMMISSIONER SHALL PREPARE AN ANNUAL REPORT FOR THE
14 SECRETARY ON THE ADMINISTRATION AND ENFORCEMENT OF THIS SUBTITLE,
15 THAT SHALL INCLUDE:

16 (1) THE NUMBER AND NATURE OF COMPLAINTS RECEIVED;

17 (2) THE NUMBER OF INVESTIGATIONS CONDUCTED;

18 (3) THE NUMBER OF CITATIONS ISSUED;

19 (4) THE NUMBER OF INFORMAL RESOLUTIONS OF THE CITATIONS;

20 (5) THE NUMBER OF FINAL ADMINISTRATIVE ORDERS, WITH A
21 DESCRIPTION, THAT SHALL INCLUDE:

22 (I) WHETHER THE ALLEGED VIOLATION WAS FOUND; AND

23 (II) WHETHER THE ORDER AFFIRMED OR OVERTURNED A
24 PROPOSED DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS;

25 (6) THE NUMBER OF ORDERS OF THE COMMISSIONER REVIEWED
26 BY THE SECRETARY AND WHETHER THEY WERE AFFIRMED OR OVERTURNED;
27 AND

1 (7) THE NUMBER OF REQUESTS FOR JUDICIAL REVIEW OF
2 ADMINISTRATIVE ORDERS AND WHETHER THE ORDERS WERE AFFIRMED OR
3 OVERTURNED.

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

5 8-201.

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

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

10 (i) for wages; or

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

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

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

19 **8-201.1.**

20 (A) IN THIS SECTION, "KNOWINGLY" MEANS HAVING ACTUAL
21 KNOWLEDGE, DELIBERATE IGNORANCE, OR RECKLESS DISREGARD FOR THE
22 TRUTH.

23 (B) AN EMPLOYER MAY NOT ~~MISCLASSIFY~~ **FAIL TO PROPERLY CLASSIFY**
24 **AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR.**

25 (C) (1) ~~WHERE~~ **IF THE SECRETARY DETERMINES THAT AN**
26 **EMPLOYING UNIT HAS ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN**
27 **EMPLOYEE AS AN INDEPENDENT CONTRACTOR, ANY AND ALL CONTRIBUTION**
28 **OR REIMBURSEMENT PAYMENTS RESULTING FROM THE ~~MISCLASSIFICATION~~**
29 **FAILURE TO PROPERLY CLASSIFY THAT ARE DUE AND UNPAID SHALL ACCRUE**
30 **INTEREST AT THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE**
31 **FIRST DUE DATE FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE**
32 **SECRETARY RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF**

1 ~~CONTRIBUTIONS AND INTEREST~~ AS PROVIDED IN PARAGRAPH (2) OF THIS
2 SUBSECTION.

3 (2) AN EMPLOYER WHO FAILS TO PAY THE CONTRIBUTION OR
4 REIMBURSEMENT PAYMENTS WITHIN 45 DAYS SHALL BE ASSESSED INTEREST AT
5 THE RATE OF 2% PER MONTH OR PART OF A MONTH FROM THE FIRST DUE DATE
6 FOLLOWING NOTICE OF THE MISCLASSIFICATION UNTIL THE SECRETARY
7 RECEIVES THE CONTRIBUTION OR PAYMENT IN LIEU OF CONTRIBUTIONS AND
8 INTEREST.

9 (D) THE SECRETARY SHALL CONSIDER, AS STRONG EVIDENCE THAT AN
10 EMPLOYER DID NOT KNOWINGLY FAIL TO PROPERLY CLASSIFY AN INDIVIDUAL,
11 WHETHER THE EMPLOYER:

12 (1) (I) CLASSIFIES ALL WORKERS WHO PERFORM THE SAME OR
13 SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER AS INDEPENDENT
14 CONTRACTORS; AND

15 (II) REPORTS THE INCOME OF THE WORKERS TO THE
16 INTERNAL REVENUE SERVICE AS REQUIRED BY FEDERAL LAW; AND

17 (2) HAS RECEIVED A DETERMINATION FROM THE INTERNAL
18 REVENUE SERVICE THAT THE INDIVIDUAL OR A WORKER WHO PERFORMS THE
19 SAME OR SUBSTANTIALLY THE SAME TASKS FOR THE EMPLOYER IS AN
20 INDEPENDENT CONTRACTOR.

21 ~~(D)~~ (E) WHERE IF THE SECRETARY DETERMINES THAT AN EMPLOYING
22 UNIT HAS KNOWINGLY MISCLASSIFIED FAILED TO PROPERLY CLASSIFY AN
23 EMPLOYEE AS AN INDEPENDENT CONTRACTOR, THE EMPLOYING UNIT SHALL BE
24 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$5,000 PER EMPLOYEE.

25 ~~(E)~~ (F) (1) A PERSON MAY NOT KNOWINGLY ADVISE AN EMPLOYING
26 UNIT OR A PROSPECTIVE EMPLOYING UNIT TO TAKE ACTION FOR THE
27 PURPOSES OF VIOLATING THIS SECTION.

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

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

1 ~~(G)~~ (H) (1) AN EMPLOYING UNIT MAY BE ASSESSED CIVIL PENALTIES
2 BY ONLY ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME
3 ACTIONS CONSTITUTING A KNOWING ~~MISCLASSIFICATION~~ FAILURE TO
4 PROPERLY CLASSIFY OF AN EMPLOYEE.

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

12 ~~(H)~~ (I) ~~WHERE IF~~ THE SECRETARY DETERMINES THAT AN EMPLOYING
13 UNIT HAS ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN EMPLOYEE, THE
14 SECRETARY SHALL PROMPTLY NOTIFY THE WORKERS' COMPENSATION
15 COMMISSION, THE DIVISION OF LABOR AND INDUSTRY, THE INSURANCE
16 ADMINISTRATION, AND THE COMPTROLLER.

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

23 ~~(J)~~ (K) (1) THE SECRETARY ~~MAY~~ SHALL ADOPT REGULATIONS TO
24 CARRY OUT THIS SECTION.

25 (2) THE REGULATIONS SHALL:

26 (I) REQUIRE THAT THE SECRETARY PROVIDE AN
27 EMPLOYER WITH THE FACTUAL BASIS FOR ANY VIOLATIONS CHARGED;

28 (II) ESTABLISH PROCEDURES REGARDING THE AUDIT
29 PROCESS AND ANY AGENCY LEVEL REVIEW AVAILABLE BEFORE APPEAL; AND

30 (III) PROVIDE GUIDANCE AS TO WHAT CONSTITUTES THE
31 EVIDENCE RELEVANT TO THE DETERMINATION OF WHETHER AN EMPLOYER
32 KNOWINGLY FAILED TO PROPERLY CLASSIFY AN EMPLOYEE.

33 8-205.

34 (A) Work that an individual performs under any contract of hire is not
35 covered employment if the Secretary is satisfied that:

1 (1) the individual who performs the work is free from control and
2 direction over its performance both in fact and under the contract;

3 (2) the individual customarily is engaged in an independent business
4 or occupation of the same nature as that involved in the work; and

5 (3) the work is:

6 (i) outside of the usual course of business of the person for
7 whom the work is performed; or

8 (ii) performed outside of any place of business of the person for
9 whom the work is performed.

10 **(B) THE SECRETARY SHALL ADOPT REGULATIONS TO PROVIDE:**

11 **(1) GENERAL GUIDANCE ABOUT THE APPLICATION OF**
12 **SUBSECTION (A) OF THIS SECTION; AND**

13 **(2) SPECIFIC EXAMPLES OF HOW SUBSECTION (A) OF THIS**
14 **SECTION IS APPLIED TO CERTAIN INDUSTRIES, INCLUDING THE CONSTRUCTION**
15 **INDUSTRY, THE LANDSCAPING INDUSTRY, AND THE HOME CARE SERVICES**
16 **INDUSTRY.**

17 **8-610.1.**

18 **AN EMPLOYING UNIT THAT HAS KNOWINGLY FAILED TO PROPERLY**
19 **CLASSIFY AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR UNDER § 8-201.1**
20 **OF THIS TITLE SHALL PAY CONTRIBUTIONS FOR 2 YEARS:**

21 **(1) AT A RATE APPLIED TO THE TAXABLE WAGE BASE THAT**
22 **WOULD HAVE BEEN ASSIGNED TO THE EMPLOYING UNIT UNDER THIS SUBTITLE**
23 **IF THE EMPLOYING UNIT HAD NOT KNOWINGLY FAILED TO PROPERLY CLASSIFY**
24 **AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR; PLUS**

25 **(2) TWO PERCENTAGE POINTS.**

26 8-628.

27 [A] EXCEPT AS PROVIDED IN § 8-201.1 OF THIS TITLE, A contribution or
28 reimbursement payment that is due and unpaid shall accrue interest at the rate of
29 1.5% per month or part of a month from the date on which it is due until the Secretary
30 receives the contribution or payment in lieu of contributions and the interest.

31 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 **9-315.1.**

12 **THE COMMISSION SHALL PAY THE COSTS OF THE ADMINISTRATION OF**
 13 **THE WORKFORCE FRAUD PROGRAM BY THE COMMISSIONER OF LABOR AND**
 14 **INDUSTRY UNDER TITLE 3, SUBTITLE 9 OF THIS ARTICLE.**

15 **9-316.**

16 (b) Out of money appropriated for the maintenance of the Commission, the
 17 State shall pay the salaries, administrative expenses, and all other expenses of the
 18 Commission, including:

19 (1) the costs of the administration of the Occupational Safety and
 20 Health Program by the Commissioner of Labor and Industry under Title 5 of this
 21 article; [and]

22 (2) **THE COSTS OF THE ADMINISTRATION OF THE WORKFORCE**
 23 **FRAUD PROGRAM BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER**
 24 **TITLE 3, SUBTITLE 9 OF THIS ARTICLE; AND**

25 **[(2)] (3) any cost incurred by the State, including contribution as an**
 26 **employer, because of the participation of a Commissioner in the Judges' Retirement**
 27 **System of the State of Maryland.**

28 **9-402.1.**

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

32 (B) **AN EMPLOYER MAY NOT ~~MISCLASSIFY~~ FAIL TO PROPERLY CLASSIFY**
 33 **AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR.**

1 (C) IF THE COMMISSION DETERMINES THAT AN EMPLOYER
2 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN EMPLOYEE AS AN
3 INDEPENDENT CONTRACTOR THE COMMISSION SHALL ORDER THE EMPLOYER
4 TO SECURE COMPENSATION FOR THE COVERED EMPLOYEE IN ACCORDANCE
5 WITH § 9-407 OF THIS SUBTITLE.

6 (D) IF THE COMMISSION DETERMINES THAT AN EMPLOYER KNOWINGLY
7 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN EMPLOYEE AS AN
8 INDEPENDENT CONTRACTOR, THE COMMISSION SHALL, IN CONFORMANCE WITH
9 § 9-310 OF THIS TITLE, ASSESS A CIVIL PENALTY OF NOT MORE THAN \$5,000.

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

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

14 (F) AN EMPLOYER FOUND TO HAVE KNOWINGLY VIOLATED THIS
15 SECTION WHO HAS ALSO BEEN FOUND PREVIOUSLY TO HAVE KNOWINGLY
16 VIOLATED THIS SECTION BY A FINAL ORDER OF A COURT OR ADMINISTRATIVE
17 UNIT MAY BE ASSESSED DOUBLE THE ADMINISTRATIVE PENALTIES SET FORTH
18 IN SUBSECTION (D) OF THIS SECTION FOR THE NEW VIOLATION.

19 (G) (1) AN EMPLOYER MAY BE ASSESSED CIVIL PENALTIES BY ONLY
20 ONE ORDER OF A COURT OR ADMINISTRATIVE UNIT FOR THE SAME ACTIONS
21 CONSTITUTING A KNOWING ~~MISCLASSIFICATION OF~~ FAILURE TO PROPERLY
22 CLASSIFY AN EMPLOYEE.

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

30 (H) ~~WHERE~~ IF THE COMMISSION DETERMINES THAT AN EMPLOYER HAS
31 ~~MISCLASSIFIED~~ FAILED TO PROPERLY CLASSIFY AN EMPLOYEE, THE
32 COMMISSION SHALL PROMPTLY NOTIFY THE OFFICE OF UNEMPLOYMENT
33 INSURANCE, THE DIVISION OF LABOR AND INDUSTRY, THE INSURER, IF ANY,
34 THE INSURANCE ADMINISTRATION, AND THE COMPTROLLER.

35 (I) AS AUTHORIZED BY STATE AND FEDERAL LAW, UNITS WITHIN THE
36 DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE

1 DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY OF STATE, THE
2 COMPTROLLER, THE INSURANCE ADMINISTRATION AND OTHER STATE
3 AGENCIES SHALL COOPERATE AND SHARE INFORMATION CONCERNING ANY
4 SUSPECTED VIOLATION OF THIS TITLE.

5 (J) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS
6 SECTION.

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

10 SECTION 3. AND BE IT FURTHER ENACTED, That the Commissioner of
11 Labor and Industry shall report to the Governor and, in accordance with § 2-1246 of
12 the State Government Article, the General Assembly on the Commissioner’s
13 investigations of complaints of violations of this Act and the outcomes of those
14 investigations including any recommendations by the Commissioner to improve the
15 administration and enforcement of this Act, as well as any other information that the
16 Commissioner determines relevant.

17 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this
18 Act or the application thereof to any person or circumstance is held invalid for any
19 reason in a court of competent jurisdiction, the invalidity does not affect other
20 provisions or any other application of this Act which can be given effect without the
21 invalid provision or application, and for this purpose the provisions of this Act are
22 declared severable.

23 SECTION 5. AND BE IT FURTHER ENACTED, That, notwithstanding
24 § 10-111(b) of the State Government Article, regulations proposed to implement this
25 Act may not be proposed as emergency regulations.

26 SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of
Delegates.