

# SENATE BILL 838

K3, P2, Q3

3lr1521  
CF HB 1261

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By: **Senators Kramer, Augustine, Beidle, Gile, Klausmeier, McCray, Muse, Salling,  
and Waldstreicher**

Introduced and read first time: February 6, 2023

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2023

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Workplace Fraud and Prevailing Wage – Violations – ~~Penalties and Referrals~~**

3 FOR the purpose of ~~establishing certain criminal penalties for employers knowingly failing~~  
4 ~~to properly classify individuals as employees and contractors and subcontractors~~  
5 ~~knowingly violating State prevailing wage laws~~; requiring the Commissioner of  
6 Labor and Industry to refer to the Comptroller certain complaints that allege a  
7 violation of certain tax laws under certain circumstances; and generally relating to  
8 violations of the workplace fraud and State prevailing wage laws.

9 BY repealing and reenacting, with amendments,  
10 Article – Labor and Employment  
11 Section ~~3-909 and~~ 3-910  
12 Annotated Code of Maryland  
13 (2016 Replacement Volume and 2022 Supplement)

14 BY adding to  
15 Article – State Finance and Procurement  
16 Section 17-227  
17 Annotated Code of Maryland  
18 (2021 Replacement Volume and 2022 Supplement)

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

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### 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 Article – Labor and Employment

2 ~~3-909.~~

3 (a) ~~An employer found to have knowingly failed to properly classify an individual~~  
4 ~~in violation of § 3-904 of this subtitle:~~

5 ~~(1) shall be assessed a civil penalty of up to \$5,000 for each employee who~~  
6 ~~was not properly classified; AND~~

7 ~~(2) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT~~  
8 ~~TO A FINE NOT TO EXCEED \$5,000 OR IMPRISONMENT NOT EXCEEDING 60 DAYS OR~~  
9 ~~BOTH FOR EACH EMPLOYEE WHO WAS NOT PROPERLY CLASSIFIED.~~

10 (b) ~~In determining the amount of the penalty TO BE ASSESSED UNDER~~  
11 ~~SUBSECTION (A)(1) OF THIS SECTION, the Commissioner or the administrative law judge~~  
12 ~~shall consider:~~

13 ~~(1) the gravity of the violation;~~

14 ~~(2) the size of the employer's business;~~

15 ~~(3) the employer's good faith;~~

16 ~~(4) the employer's history of violations under this subtitle; and~~

17 ~~(5) whether the employer:~~

18 ~~(i) has been found, by a court or an administrative unit, to have~~  
19 ~~deprived the employee of any rights to which the employee would have been entitled under~~  
20 ~~a State protective labor law, including but not limited to:~~

21 ~~1. any provision of this article;~~

22 ~~2. the State prevailing wage law, under §§ 17-221 and~~  
23 ~~17-222 of the State Finance and Procurement Article; or~~

24 ~~3. the living wage law, under § 18-108 of the State Finance~~  
25 ~~and Procurement Article; and~~

26 ~~(ii) has made restitution and come into compliance with all such~~  
27 ~~State protective labor laws with respect to the employee.~~

28 (e) ~~If the court or an administrative unit determines that an individual or class~~  
29 ~~of individuals is entitled to restitution as a result of the employer's violation of § 3-904 of~~  
30 ~~this subtitle, the court or administrative unit:~~

1           ~~(1) shall award each individual any restitution to which the individual may~~  
2 ~~be entitled; and~~

3           ~~(2) may award each individual an additional amount up to three times the~~  
4 ~~amount of such restitution.~~

5           ~~(d) An employer in violation of § 3-904 of this subtitle may be assessed double the~~  
6 ~~administrative penalties set forth in subsection [(a)] (A)(1) of this section if the employer~~  
7 ~~has been found previously to have violated this subtitle by a final order of a court or an~~  
8 ~~administrative unit.~~

9           ~~(e) An employer who has been found by a final order of a court or an~~  
10 ~~administrative unit to have violated § 3-904 of this subtitle three or more times may be~~  
11 ~~assessed an administrative penalty of up to \$20,000 for each employee.~~

12           ~~(f) (1) An employer may be assessed civil penalties under this section or §~~  
13 ~~8-201.1 or § 9-402.1 of this article by only one final order of a court or administrative unit~~  
14 ~~for the same actions constituting a violation of this subtitle.~~

15           ~~(2) Notwithstanding paragraph (1) of this subsection, an employer may be~~  
16 ~~ordered to make restitution, pay any interest due, and otherwise comply with all applicable~~  
17 ~~laws and regulations by orders of a court and all relevant administrative units, including~~  
18 ~~the Comptroller, the Office of Unemployment Insurance, the Insurance Administration,~~  
19 ~~and the Workers' Compensation Commission.~~

20           ~~(g) Any penalty issued under SUBSECTION (A)(1) OF this section against an~~  
21 ~~employer shall be in effect against any successor corporation or business entity that:~~

22           ~~(1) has one or more of the same principals or officers as the employer~~  
23 ~~against whom the penalty was assessed, unless the principal or officer did not or with the~~  
24 ~~exercise of reasonable diligence could not know of the violation for which the penalty was~~  
25 ~~imposed; and~~

26           ~~(2) is engaged in the same or equivalent trade or activity.~~

27 3-910.

28           (A) As authorized by State and federal law, units within the Maryland  
29 Department of Labor and the Department of Budget and Management, the Secretary of  
30 State, the Comptroller, the Maryland Insurance Administration, and other State agencies  
31 shall cooperate and share information concerning any suspected failure to properly classify  
32 an individual as an employee.

33           (B) ON A SHOWING ~~BY CLEAR AND CONVINCING EVIDENCE~~ THAT A  
34 VIOLATION OF § 3-904 OF THIS SUBTITLE HAS OCCURRED AND AS AUTHORIZED BY

1 FEDERAL AND STATE LAW, THE COMMISSIONER SHALL REFER TO THE  
2 COMPTROLLER FOR AN INVESTIGATION BY THE FIELD ENFORCEMENT BUREAU  
3 ANY COMPLAINT THAT ALLEGES A VIOLATION OF § 13-1007 OR §  
4 13-1024 OF THE TAX – GENERAL ARTICLE.

5 Article – State Finance and Procurement

6 17-227.

7 ~~(A) IN ADDITION TO ANY OTHER PENALTIES AUTHORIZED UNDER THIS~~  
8 ~~SUBTITLE, A CONTRACTOR OR SUBCONTRACTOR FOUND TO HAVE KNOWINGLY~~  
9 ~~VIOLATED THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS~~  
10 ~~SUBJECT TO A FINE NOT TO EXCEED \$5,000 OR IMPRISONMENT NOT EXCEEDING 60~~  
11 ~~DAYS OR BOTH FOR EACH VIOLATION.~~

12 ~~(B)~~ ON A SHOWING ~~BY CLEAR AND CONVINCING EVIDENCE~~ THAT A KNOWING  
13 VIOLATION OF THIS SUBTITLE HAS OCCURRED, THE COMMISSIONER SHALL REFER  
14 TO THE COMPTROLLER FOR AN INVESTIGATION BY THE FIELD ENFORCEMENT  
15 BUREAU ANY COMPLAINT THAT ALLEGES A VIOLATION OF § 13-1007 OR § 13-1024  
16 OF THE TAX – GENERAL ARTICLE.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2023.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.