

SENATE BILL 938

K3, P1, P2

5lr3237
CF HB 1096

By: **The President (By Request – Office of the Attorney General)**

Introduced and read first time: January 28, 2025

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Fraud Prevention and Worker Protections – Prohibitions, Penalties, and**
3 **Enforcement**

4 FOR the purpose of altering the claims to which the Maryland False Claim Act (MFCA)
5 applies; prohibiting a person from knowingly making or using, or causing to be made
6 or used, a false record or statement resulting in underpayments of unemployment
7 insurance contributions or payment of unemployment insurance benefits of more
8 than a certain amount; requiring the Comptroller to deposit into the Unemployment
9 Insurance Fund certain civil penalties or damages collected under the MFCA;
10 requiring that certain civil penalties and damages be used in a certain manner if a
11 violation of the MFCA involves the failure to pay prevailing wage rates; altering the
12 enforcement mechanisms of the Maryland Wage and Hour Law, the Maryland Wage
13 Payment and Collection Law, workplace fraud laws, living wage laws, and prevailing
14 wage laws; altering the circumstances under which a person may be debarred under
15 State procurement law; altering the application of certain provisions of law
16 governing workplace fraud; providing that general contractors and higher-tiered
17 contracts are considered to be employers of certain workers under the workplace
18 fraud laws; altering the test used to determine if an employer–employee relationship
19 is created for purposes of workplace fraud; providing that workplace fraud laws
20 cannot be waived or set aside by private agreement; establishing that a certain
21 agreement is not a defense to a citation or in a civil action brought under the
22 workplace fraud laws; requiring a licensing authority to revoke or suspend the
23 license of a licensee for a certain workplace fraud violation under certain
24 circumstances; establishing the Worker Protection Unit in the Office of the Attorney
25 General to protect workers’ rights in the State and enforce certain worker protection
26 laws; and generally relating to fraud prevention and workers’ protections.

27 BY repealing

28 Article – Labor and Employment

29 Section 3–903.1 and 3–904 through 3–909

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2016 Replacement Volume and 2024 Supplement)

2 BY renumbering

3 Article – Labor and Employment

4 Section 3–903, 3–910, 3–911, 3–913 through 3–915, and 3–917 through 3–920

5 to be Section 3–904, 3–912, 3–913, 3–915 through 3–917, and 3–918 through 3–921,

6 respectively

7 Annotated Code of Maryland

8 (2016 Replacement Volume and 2024 Supplement)

9 BY repealing and reenacting, without amendments,

10 Article – General Provisions

11 Section 8–101(a) and 8–102(c)

12 Annotated Code of Maryland

13 (2019 Replacement Volume and 2024 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – General Provisions

16 Section 8–101(b), 8–102(a) and (b)(8) and (9), and 8–109(c)

17 Annotated Code of Maryland

18 (2019 Replacement Volume and 2024 Supplement)

19 BY adding to

20 Article – General Provisions

21 Section 8–102(b)(9)

22 Annotated Code of Maryland

23 (2019 Replacement Volume and 2024 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Labor and Employment

26 Section 3–101, 3–427, 3–507.2, 3–901, and 3–902

27 Annotated Code of Maryland

28 (2016 Replacement Volume and 2024 Supplement)

29 BY adding to

30 Article – Labor and Employment

31 Section 3–903, 3–905 through 3–911, and 3–914

32 Annotated Code of Maryland

33 (2016 Replacement Volume and 2024 Supplement)

34 BY repealing and reenacting, with amendments,

35 Article – Labor and Employment

36 Section 3–904, 3–912, 3–913, and 3–915(a)

37 Annotated Code of Maryland

38 (2016 Replacement Volume and 2024 Supplement)

39 (As enacted by Section 2 of this Act)

1 BY repealing and reenacting, with amendments,
2 Article – State Finance and Procurement
3 Section 16–203(a)(9) and (10), 17–224, and 18–109
4 Annotated Code of Maryland
5 (2021 Replacement Volume and 2024 Supplement)

6 BY adding to
7 Article – State Government
8 Section 6–1001 through 6–1010 to be under the new subtitle “Subtitle 10. Worker
9 Protection Unit”
10 Annotated Code of Maryland
11 (2021 Replacement Volume and 2024 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That Section(s) 3–903.1 and 3–904 through 3–909 of Article – Labor and Employment of
14 the Annotated Code of Maryland be repealed.

15 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 3–903, 3–910,
16 3–911, 3–913 through 3–915, and 3–917 through 3–920 of Article – Labor and Employment
17 of the Annotated Code of Maryland be renumbered to be Section(s) 3–904, 3–912, 3–913,
18 3–915 through 3–917, and 3–918 through 3–921, respectively.

19 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
20 as follows:

21 **Article – General Provisions**

22 8–101.

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

24 (b) (1) “Claim” means a request or demand, under a contract or otherwise, for
25 money or other property, whether or not the governmental entity has title to the money or
26 property, that is:

27 (i) presented to an officer, employee, or agent of a governmental
28 entity; or

29 (ii) made to a contractor, a grantee, or another recipient, if the
30 money or other property is to be spent or used on a governmental entity’s behalf or to
31 advance an interest of a governmental entity, and the governmental entity:

32 1. provides or has provided any portion of the money or other
33 property requested or demanded; or

34 2. will reimburse the contractor, grantee, or other recipient
35 for any portion of the money or other property that is requested or demanded.

1 (2) “Claim” does not include requests or demands for money or other
2 property **MADE BY AN INDIVIDUAL BENEFICIARY** that a governmental entity has paid to
3 **[an] THE** individual as compensation for employment or as an income subsidy with no
4 restrictions on that individual’s use of the money or other property.

5 8–102.

6 (a) **[This] EXCEPT AS PROVIDED IN SUBSECTION (B)(9) OF THIS SECTION,**
7 **THIS** section does not apply to claims, records, or statements related to State or local taxes.

8 (b) A person may not:

9 (8) knowingly conceal, or knowingly and improperly avoid or decrease, an
10 obligation to pay or transmit money or other property to a governmental entity, including
11 misrepresenting the time at which a trade was made to make the transaction appear less
12 favorable; **[or]**

13 **(9) KNOWINGLY MAKE, USE, OR CAUSE TO BE MADE OR USED A FALSE**
14 **RECORD OR STATEMENT RESULTING IN:**

15 **(I) THE UNDERPAYMENT OF CONTRIBUTIONS OWED TO THE**
16 **UNEMPLOYMENT INSURANCE FUND; OR**

17 **(II) THE PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS**
18 **OF MORE THAN \$15,000 IN A CALENDAR YEAR; OR**

19 **[(9)] (10)** knowingly make any other false or fraudulent claim against a
20 governmental entity.

21 (c) (1) A person that is found to have violated subsection (b) of this section is
22 liable to the governmental entity for:

23 (i) a civil penalty of not more than \$10,000 for each violation; and

24 (ii) an additional amount of not more than three times the amount
25 of damages that the governmental entity sustains as a result of the acts of that person in
26 violation of subsection (b) of this section.

27 (2) The total amount owed by a person under paragraph (1) of this
28 subsection may not be less than the amount of the actual damages the governmental entity
29 incurs as a result of the person’s violation of subsection (b) of this section.

30 8–109.

1 (c) (1) Except as provided under paragraph (2) of this subsection, the
2 Comptroller shall deposit any civil penalty or damages collected by the State under this
3 title into the General Fund of the State.

4 (2) (i) If a violation of this title affects any of the following funds, the
5 Comptroller shall deposit any civil penalty or damages collected by the State under this
6 title into the affected fund:

7 1. a fund that is not subject to § 7-302 of the State Finance
8 and Procurement Article;

9 2. a special fund requiring the reversion of appropriated
10 funds to the special fund under § 7-304 of the State Finance and Procurement Article;

11 3. a fund under the jurisdiction of the Board of Trustees for
12 the State Retirement and Pension System; [or]

13 4. a fund under the jurisdiction of the State Employee and
14 Retiree Health and Welfare Benefits Program; OR

15 **5. THE UNEMPLOYMENT INSURANCE FUND.**

16 (ii) If more than one fund is affected by a violation of this title, the
17 Comptroller shall deposit any civil penalty or damages collected by the State into the
18 appropriate fund or the General Fund of the State on a pro rata basis.

19 **(III) IF A VIOLATION OF THIS TITLE INVOLVES THE FAILURE TO**
20 **PAY PREVAILING WAGE RATES IN ACCORDANCE WITH TITLE 17, SUBTITLE 2 OF THE**
21 **STATE FINANCE AND PROCUREMENT ARTICLE, CIVIL PENALTIES AND DAMAGES**
22 **COLLECTED UNDER THIS TITLE SHALL BE USED TO PAY RESTITUTION DIRECTLY TO**
23 **AFFECTED WORKERS.**

24 **Article – Labor and Employment**

25 3-101.

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

27 (b) **“ATTORNEY GENERAL” MEANS THE ATTORNEY GENERAL OF**
28 **MARYLAND, OR THE ATTORNEY GENERAL’S AUTHORIZED REPRESENTATIVE.**

29 (c) **“Commissioner” means the Commissioner of Labor and Industry, OR THE**
30 **COMMISSIONER’S AUTHORIZED REPRESENTATIVE.**

31 **[(c)] (D)** (1) **“Employ” means to engage an individual to work.**

- 1 (2) “Employ” includes:
- 2 (i) allowing an individual to work; and
- 3 (ii) instructing an individual to be present at a work site.

4 3–427.

5 (a) **(1)** If an employer pays an employee less than the wage required under this
6 subtitle, the employee may bring an action against the employer to recover:

7 **[(1)] (I)** the difference between the wage paid to the employee and the
8 wage required under this subtitle;

9 **[(2)] (II)** an additional amount equal to the difference between the wage
10 paid to the employee and the wage required under this subtitle as liquidated damages; and

11 **[(3)] (III)** counsel fees and other costs.

12 **[(b)] (2)** On the written request of an employee who is entitled to bring an action
13 under this section, the Commissioner may:

14 **[(1)] (I)** take an assignment of the claim in trust for the employee;

15 **[(2)] (II)** ask the Attorney General to bring an action in accordance with
16 this section on behalf of the employee; and

17 **[(3)] (III)** consolidate **[2] TWO** or more claims against an employer.

18 **(3) (I) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED**
19 **TO RECOVERY IN AN ACTION UNDER THIS SECTION, THE COURT SHALL AWARD TO**
20 **THE EMPLOYEE:**

21 **1. THE DIFFERENCE BETWEEN THE WAGE PAID TO THE**
22 **EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE;**

23 **2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
24 **PARAGRAPH, AN ADDITIONAL AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE**
25 **WAGE PAID TO THE EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE AS**
26 **LIQUIDATED DAMAGES; AND**

27 **3. REASONABLE COUNSEL FEES AND OTHER COSTS.**

28 **(II) IF AN EMPLOYER SHOWS TO THE SATISFACTION OF THE**
29 **COURT THAT THE EMPLOYER ACTED IN GOOD FAITH AND REASONABLY BELIEVED**

1 THAT THE WAGES PAID TO THE EMPLOYEE WERE NOT LESS THAN THE WAGE
2 REQUIRED UNDER THIS SUBTITLE, THE COURT SHALL:

3 1. DETERMINE THAT LIQUIDATED DAMAGES SHOULD
4 NOT BE AWARDED; OR

5 2. AWARD AS LIQUIDATED DAMAGES ANY AMOUNT LESS
6 THAN THE AMOUNT SPECIFIED IN SUBPARAGRAPH (I)2 OF THIS PARAGRAPH.

7 (B) (1) THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST AN
8 EMPLOYER ON BEHALF OF AN EMPLOYEE IF:

9 (I) THE EMPLOYER PAYS 10 OR MORE EMPLOYEES LESS THAN
10 THE WAGE REQUIRED UNDER THIS SUBTITLE; OR

11 (II) THE TOTAL AMOUNT OF WAGES UNDERPAID FOR ALL
12 AFFECTED EMPLOYEES IS \$25,000 OR GREATER.

13 (2) IN AN ACTION BROUGHT UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION, THE ATTORNEY GENERAL MAY RECOVER:

15 (I) THE DIFFERENCE BETWEEN THE WAGES PAID TO THE
16 EMPLOYEES AND THE WAGE REQUIRED UNDER THIS SUBTITLE;

17 (II) AN ADDITIONAL AMOUNT EQUAL TO THE DIFFERENCE
18 BETWEEN THE WAGES PAID TO THE EMPLOYEES AND THE WAGE REQUIRED UNDER
19 THIS SUBTITLE AS LIQUIDATED DAMAGES;

20 (III) A CIVIL PENALTY OF \$5,000 FOR EACH VIOLATION PAYABLE
21 INTO THE GENERAL FUND OF THE STATE;

22 (IV) REASONABLE ATTORNEY'S FEES AND OTHER COSTS
23 PAYABLE TO THE ATTORNEY GENERAL; AND

24 (V) ANY OTHER APPROPRIATE RELIEF.

25 (3) BEFORE INITIATING AN ACTION UNDER THIS SECTION, THE
26 ATTORNEY GENERAL MAY CONDUCT AN INVESTIGATION.

27 (c) The agreement of an employee to work for less than the wage to which the
28 employee is entitled under this subtitle is not a defense to an action under this section.

29 [(d) (1) If a court determines that an employee is entitled to recovery in an
30 action under this section, the court shall award to the employee:

1 (i) the difference between the wage paid to the employee and the
2 wage required under this subtitle;

3 (ii) except as provided in paragraph (2) of this subsection, an
4 additional amount equal to the difference between the wage paid to the employee and the
5 wage required under this subtitle as liquidated damages; and

6 (iii) reasonable counsel fees and other costs.

7 (2) If an employer shows to the satisfaction of the court that the employer
8 acted in good faith and reasonably believed that the wages paid to the employee were not
9 less than the wage required under this subtitle, the court shall:

10 (i) determine that liquidated damages should not be awarded; or

11 (ii) award, as liquidated damages, any amount less than the amount
12 specified in paragraph (1)(ii) of this subsection.]

13 3-507.2.

14 (a) **(1)** Notwithstanding any remedy available under § 3-507 of this subtitle[,]:

15 **(I)** if an employer fails to pay an employee in accordance with §
16 3-502 or § 3-505 of this subtitle, after 2 weeks have elapsed from the date on which the
17 employer is required to have paid the wages, the employee may bring an action against the
18 employer to recover the unpaid wages; **OR**

19 **(II) THE ATTORNEY GENERAL MAY BRING AN ACTION ON**
20 **BEHALF OF EMPLOYEES TO RECOVER UNPAID WAGES IF, AFTER 2 WEEKS HAVE**
21 **ELAPSED FROM THE DATE ON WHICH AN EMPLOYER IS REQUIRED TO HAVE PAID THE**
22 **WAGES:**

23 **1. THE EMPLOYER FAILS TO PAY 10 OR MORE**
24 **EMPLOYEES IN ACCORDANCE WITH § 3-502 OR § 3-505 OF THIS SUBTITLE; OR**

25 **2. IN ACCORDANCE WITH § 3-502 OR § 3-505 OF THIS**
26 **SUBTITLE, THE TOTAL AMOUNT OF UNPAID WAGES FOR ALL AFFECTED EMPLOYEES**
27 **IS \$25,000 OR GREATER.**

28 **(2) BEFORE BRINGING AN ACTION UNDER PARAGRAPH (1)(II) OF THIS**
29 **SUBSECTION, THE ATTORNEY GENERAL MAY CONDUCT AN INVESTIGATION IN**
30 **ACCORDANCE WITH § 6-1006 OF THE STATE GOVERNMENT ARTICLE.**

1 (b) If, in an action under subsection (a) of this section, a court finds that an
2 employer withheld the wage of an employee in violation of this subtitle and not as a result
3 of a bona fide dispute, the court may award the employee an amount not exceeding 3 times
4 the wage, and reasonable counsel fees and other costs.

5 (c) (1) (I) In this subsection[, “construction services” has the meaning
6 stated in § 3–901 of this title] **THE FOLLOWING WORDS HAVE THE MEANINGS**
7 **INDICATED.**

8 (II) **“CONSTRUCTION SERVICES” INCLUDES THE FOLLOWING**
9 **SERVICES PROVIDED IN CONNECTION WITH REAL PROPERTY:**

- 10 1. **BUILDING;**
- 11 2. **RECONSTRUCTING;**
- 12 3. **IMPROVING;**
- 13 4. **ENLARGING;**
- 14 5. **PAINTING;**
- 15 6. **ALTERING;**
- 16 7. **MAINTAINING; AND**
- 17 8. **REPAIRING.**

18 (III) **“GENERAL CONTRACTOR” HAS THE MEANING STATED IN §**
19 **3–901 OF THIS TITLE.**

20 (2) In an action brought under subsection (a) of this section, a general
21 contractor on a project for construction services is jointly and severally liable for a violation
22 of this subtitle that is committed by a subcontractor, regardless of whether the
23 subcontractor is in a direct contractual relationship with the general contractor.

24 (3) A subcontractor shall indemnify a general contractor for any wages,
25 damages, interest, penalties, or attorney’s fees owed as a result of the subcontractor’s
26 violation unless:

27 (i) indemnification is provided for in a contract between the general
28 contractor and the subcontractor; or

1 (ii) a violation of the subtitle arose due to a lack of prompt payment
2 in accordance with the terms of the contract between the general contractor and the
3 subcontractor.

4 3-901.

5 (a) In this subtitle the following words have the meanings indicated.

6 [(b) "Construction services" includes the following services provided in connection
7 with real property:

8 (1) building;

9 (2) reconstructing;

10 (3) improving;

11 (4) enlarging;

12 (5) painting;

13 (6) altering;

14 (7) maintaining; and

15 (8) repairing.]

16 **(B) (1) "ECONOMIC DAMAGES" MEANS A FINANCIAL LOSS INCURRED BY**
17 **AN EMPLOYEE AS A RESULT OF BEING MISCLASSIFIED BY AN EMPLOYER IN**
18 **VIOLATION OF THIS SUBTITLE.**

19 **(2) "ECONOMIC DAMAGES" INCLUDES:**

20 **(I) UNPAID WAGES;**

21 **(II) LOST BENEFITS; AND**

22 **(III) REIMBURSEMENT FOR EXPENSES THAT, BY AGREEMENT OR**
23 **PRACTICE, THE EMPLOYER PAID TO WORKERS CLASSIFIED AS EMPLOYEES.**

24 **(C) "EMPLOYEE" MEANS AN INDIVIDUAL WHO:**

25 **(1) PERFORMS WORK FOR REMUNERATION PAID BY A PERSON; AND**

1 **(2) IS ENTITLED TO ALL THE RIGHTS AND PROTECTIONS AFFORDED**
2 **TO EMPLOYEES UNDER FEDERAL AND STATE LAW, INCLUDING WAGE AND HOUR**
3 **LAWS, ANTIDISCRIMINATION LAWS, AND, AS APPLICABLE, WORKERS’**
4 **COMPENSATION AND UNEMPLOYMENT INSURANCE BENEFITS.**

5 **[(c)] (D)** “Employer” means any person, **OR A SUCCESSOR OF THE PERSON,**
6 that employs an **[individual] EMPLOYEE** in the State.

7 **[(d)]** “Exempt person” means an individual who:

8 (1) performs services in a personal capacity and employs no individuals
9 other than:

10 (i) a spouse of the exempt person;

11 (ii) children of the exempt person; or

12 (iii) parents of the exempt person;

13 (2) performs services free from direction and control over the means and
14 manner of providing the services, subject only to the right of the person or entity for whom
15 services are provided to specify the desired result;

16 (3) furnishes the tools and equipment necessary to provide the service;

17 (4) operates a business that is considered inseparable from the individual
18 for purposes of taxes, profits, and liabilities:

19 (i) in which the individual:

20 1. owns all of the assets and profits of the business; and

21 2. has sole, unlimited, personal liability for all of the debts
22 and liabilities of the business, unless the business is organized as a single-owned corporate
23 entity, to which sole, unlimited personal liability does not apply; and

24 (ii) for which:

25 1. the individual does not pay taxes for the business
26 separately but reports business income and losses on the individual’s personal tax return;
27 and

28 2. if the business is organized as a corporate entity and the
29 individual otherwise qualifies as an exempt person under this subsection, the individual
30 files a separate federal informational tax return for the entity as required by law;

1 (5) exercises complete control over the management and operations of the
2 business; and

3 (6) exercises the right and opportunity on a continuing basis to perform the
4 services of the business for multiple entities at the individual's sole choice and discretion.]

5 **(E) “GENERAL CONTRACTOR” MEANS A PERSON THAT ENTERS INTO AN**
6 **AGREEMENT WITH AN OWNER TO OVERSEE AND COORDINATE THE ENTIRE SCOPE OF**
7 **A PROJECT, INCLUDING ENSURING THAT THE WORK MEETS THE TERMS OF THE**
8 **AGREEMENT.**

9 **(F) “HIGHER-TIERED CONTRACTOR” MEANS A PERSON THAT ENTERS INTO**
10 **AN AGREEMENT WITH A GENERAL CONTRACTOR TO PERFORM SERVICES ON A**
11 **PROJECT AND WHO SUBCONTRACTS ANY PORTION OF THE WORK TO ANOTHER**
12 **PERSON.**

13 **[(e)] (G) “Knowingly” means having actual knowledge[,] OF OR deliberate**
14 **[ignorance, or reckless] disregard for the [truth] REQUIREMENTS OF THIS SUBTITLE.**

15 **[(f) “Landscaping services” includes the following services:**

16 (1) garden maintenance and planting;

17 (2) lawn care including fertilizing, mowing, mulching, seeding, and
18 spraying;

19 (3) seeding and mowing of highway strips;

20 (4) sod laying;

21 (5) turf installation, except artificial;

22 (6) ornamental bush planting, pruning, bracing, spraying, and removal;
23 and

24 (7) ornamental tree planting, pruning, bracing, spraying, and removal.

25 **(g) (1) “Place of business” means the office or headquarters of the employer.**

26 (2) “Place of business” does not include a work site at which the employer
27 has been contracted to perform services.]

28 **(h) “Public body” means:**

29 (1) the State;

1 (2) a unit of State government or an instrumentality of the State; or

2 (3) any political subdivision, agency, person, or entity that is a party to a
3 contract for which 50% or more of the money used is State money.

4 (I) "SUBCONTRACTOR" MEANS A PERSON THAT ENTERS INTO AN
5 AGREEMENT WITH A GENERAL CONTRACTOR OR HIGHER-TIERED CONTRACTOR TO
6 PERFORM A SPECIFIC PORTION OF WORK OR SERVICES AS PART OF A LARGER
7 PROJECT OR CONTRACT.

8 (J) "SUCCESSOR" MEANS AN EMPLOYER THAT:

9 (1) ACQUIRES, THROUGH ANY FORM OF TRANSACTION, THE BUSINESS
10 OPERATIONS, ASSETS, WORKFORCE, OR OTHER SIGNIFICANT ELEMENTS OF
11 ANOTHER EMPLOYER; AND

12 (2) CONTINUES TO OPERATE THE BUSINESS IN ESSENTIALLY THE
13 SAME MANNER AS THE PREVIOUS EMPLOYER.

14 (K) (1) "WORKER" MEANS AN INDIVIDUAL PERFORMING SERVICES FOR
15 REMUNERATION.

16 (2) "WORKER" INCLUDES EMPLOYEES AND INDIVIDUALS CLASSIFIED
17 OR ALLEGED TO BE INDEPENDENT CONTRACTORS, REGARDLESS OF THE LEGAL
18 RELATIONSHIP BETWEEN THE PARTIES.

19 3-902.

20 This subtitle applies [only] to [the following industries] ALL:

21 (1) [construction services] INDUSTRIES AND SECTORS WITHIN THE
22 STATE; and

23 (2) [landscaping services] EMPLOYERS, GENERAL CONTRACTORS,
24 HIGHER-TIERED CONTRACTORS, SUBCONTRACTORS, AND OTHER PERSONS
25 ENGAGING WORKERS IN THE STATE.

26 3-903.

27 (A) (1) FOR PURPOSES OF THIS SUBTITLE, A GENERAL CONTRACTOR
28 SHALL BE CONSIDERED TO BE AN EMPLOYER OF A WORKER WHO A HIGHER-TIERED
29 CONTRACTOR OR SUBCONTRACTOR HAS FAILED TO PROPERLY CLASSIFY AS AN
30 EMPLOYEE ON A PROJECT OVER WHICH THE GENERAL CONTRACTOR HAS

1 **RESPONSIBILITY FOR OVERSIGHT AND COORDINATION, INCLUDING ENSURING THAT**
2 **THE WORK MEETS THE TERMS OF THE AGREEMENT.**

3 **(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED**
4 **TO AFFECT THE EMPLOYER STATUS OF THE HIGHER-TIERED CONTRACTOR OR**
5 **SUBCONTRACTOR WITH RESPECT TO THE MISCLASSIFIED EMPLOYEE.**

6 **(B) (1) FOR PURPOSES OF THIS SUBTITLE, A HIGHER-TIERED**
7 **CONTRACTOR SHALL BE CONSIDERED AN EMPLOYER OF A WORKER WHO A**
8 **SUBCONTRACTOR OF THE HIGHER-TIERED CONTRACTOR HAS FAILED TO PROPERLY**
9 **CLASSIFY AS AN EMPLOYEE.**

10 **(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED**
11 **TO AFFECT THE EMPLOYER STATUS OF THE SUBCONTRACTOR WITH RESPECT TO**
12 **THE MISCLASSIFIED EMPLOYEE.**

13 3-904.

14 (a) An employer may not fail to properly classify an individual who performs work
15 for remuneration paid by the employer.

16 (b) An employer has failed to properly classify an individual when an
17 employer-employee relationship exists as determined under subsection (c) of this section
18 but the employer has not classified the individual as an employee.

19 [(c) (1) Except as provided in § 3-903.1 of this subtitle, for purposes of
20 enforcement of this subtitle only, work performed by an individual for remuneration paid
21 by an employer shall be presumed to create an employer-employee relationship, unless:

22 (i) the individual is an exempt person; or

23 (ii) an employer demonstrates that:

24 1. the individual who performs the work is free from control
25 and direction over its performance both in fact and under the contract;

26 2. the individual customarily is engaged in an independent
27 business or occupation of the same nature as that involved in the work; and

28 3. the work is:

29 A. outside of the usual course of business of the person for
30 whom the work is performed; or

31 B. performed outside of any place of business of the person
32 for whom the work is performed.

1 (2) Work is outside of the usual course of business of the person for whom
2 it is performed under paragraph (1) of this subsection if:

3 (i) the individual performs the work off the employer's premises;

4 (ii) the individual performs work that is not integrated into the
5 employer's operation; or

6 (iii) the work performed is unrelated to the employer's business.

7 (3) By contract, an employer may engage another business entity, which
8 may have its own employees, to do the same type of work in which the employer engages,
9 at the same location where the employer is working, without establishing an
10 employer-employee relationship between the two contracting entities.]

11 **(C) (1) AN EMPLOYER-EMPLOYEE RELATIONSHIP IS PRESUMED TO EXIST**
12 **WHEN WORK IS PERFORMED BY A WORKER FOR REMUNERATION PAID BY A PERSON,**
13 **UNLESS THE PERSON PROVIDING THE REMUNERATION DEMONSTRATES THAT:**

14 **(I) THE WORKER IS FREE FROM CONTROL AND DIRECTION**
15 **OVER THE PERFORMANCE OF SERVICES, SUBJECT ONLY TO THE RIGHT OF THE**
16 **PERSON FOR WHICH SERVICES ARE PROVIDED TO SPECIFY THE DESIRED RESULT,**
17 **BOTH IN FACT AND UNDER THE CONTRACT;**

18 **(II) THE WORKER CUSTOMARILY IS ENGAGED IN AN**
19 **INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS**
20 **THAT IS OF THE SAME NATURE AS THAT INVOLVED IN THE WORK BEING PERFORMED**
21 **BY THE WORKER FOR THE PERSON; AND**

22 **(III) THE WORK IS:**

23 **1. OUTSIDE THE USUAL COURSE OF BUSINESS OF THE**
24 **PERSON FOR WHICH THE WORK IS PERFORMED; OR**

25 **2. PERFORMED OUTSIDE ANY PLACE OF BUSINESS OF**
26 **THE PERSON FOR WHICH THE WORK IS PERFORMED.**

27 **(2) WORK IS OUTSIDE THE USUAL COURSE OF BUSINESS OF THE**
28 **PERSON FOR WHICH IT IS PERFORMED UNDER PARAGRAPH (1)(III)1 OF THIS**
29 **SUBSECTION IF:**

30 **(I) THE INDIVIDUAL PERFORMS THE WORK OFF THE**
31 **EMPLOYER'S PREMISES;**

1 (II) THE INDIVIDUAL PERFORMS WORK THAT IS NOT
2 INTEGRATED INTO THE EMPLOYER'S OPERATION; OR

3 (III) THE WORK PERFORMED IS UNRELATED TO THE
4 EMPLOYER'S BUSINESS.

5 (3) AN EMPLOYER MAY ENGAGE BY CONTRACT ANOTHER BUSINESS
6 ENTITY, WHICH MAY HAVE ITS OWN EMPLOYEES, TO DO THE SAME TYPE OF WORK IN
7 WHICH THE EMPLOYER ENGAGES AT THE SAME LOCATION WHERE THE EMPLOYER
8 IS WORKING WITHOUT ESTABLISHING AN EMPLOYER-EMPLOYEE RELATIONSHIP
9 BETWEEN THE TWO CONTRACTING ENTITIES.

10 (d) The Commissioner shall adopt regulations to explain further and provide
11 specific examples of the application of subsection (c) of this section.

12 **3-905.**

13 (A) THIS SUBTITLE MAY NOT BE WAIVED OR SET ASIDE BY PRIVATE
14 AGREEMENT.

15 (B) AN AGREEMENT MADE BETWEEN AN EMPLOYER AND EMPLOYEE IN
16 WHICH THE EMPLOYEE AGREES TO BE CLASSIFIED AS AN INDEPENDENT
17 CONTRACTOR IS NOT A DEFENSE TO A CITATION OR IN A CIVIL ACTION BROUGHT
18 UNDER THIS SUBTITLE.

19 **3-906.**

20 (A) THE COMMISSIONER, ON THE COMMISSIONER'S OWN INITIATIVE OR ON
21 RECEIPT OF A COMPLAINT, SHALL INVESTIGATE TO DETERMINE COMPLIANCE WITH
22 THIS SUBTITLE.

23 (B) (1) IN CONDUCTING AN INVESTIGATION UNDER THIS SECTION, THE
24 COMMISSIONER MAY:

25 (I) ENTER AND INSPECT A PERSON'S PLACE OF BUSINESS OR
26 PLACE OF WORK TO:

27 1. OBSERVE WORK BEING PERFORMED; AND

28 2. EXAMINE AND COPY:

29 A. RECORDS THAT THE PERSON IS REQUIRED TO KEEP IN
30 ACCORDANCE WITH THIS TITLE;

1 **B. BOOKS, REGISTERS, PAYROLL RECORDS, RECORDS OF**
2 **WAGE WITHHOLDINGS, RECORDS OF WORK ACTIVITY AND HOURS OF WORK, AND**
3 **RECORDS OR INDICIA OF THE EMPLOYMENT STATUS OF WORKERS PERFORMING**
4 **WORK FOR THE PERSON; AND**

5 **C. ANY OTHER RECORDS RELATING TO COMPLIANCE**
6 **WITH THIS SUBTITLE OR REGULATIONS ADOPTED UNDER THIS SUBTITLE;**

7 **(II) REQUIRE A PERSON TO PRODUCE WITHIN 15 CALENDAR**
8 **DAYS A TRUE AND CORRECT COPY OF AN ITEM DESCRIBED UNDER ITEM (I)2 OF THIS**
9 **PARAGRAPH;**

10 **(III) DETERMINE THE IDENTITY AND ACTIVITIES OF A WORKER**
11 **RECEIVING REMUNERATION FROM THE PERSON; OR**

12 **(IV) CONDUCT CONFIDENTIAL INTERVIEWS AND OBTAIN ORAL**
13 **OR WRITTEN STATEMENTS FROM A WORKER RELATING TO INFORMATION**
14 **CONCERNING THE REMUNERATION OF WORKERS AND THE NATURE AND EXTENT OF**
15 **THE SERVICES PERFORMED.**

16 **(2) THE COMMISSIONER MAY CONDUCT THE ACTIVITIES DESCRIBED**
17 **IN PARAGRAPH (1) OF THIS SUBSECTION AT:**

18 **(I) A LOCATION WHERE WORKERS ARE ENGAGED TO PERFORM**
19 **WORK FOR THE PERSON; AND**

20 **(II) ANY OTHER LOCATION WHERE THE ITEMS DESCRIBED IN**
21 **PARAGRAPH (1)(I) OF THIS SUBSECTION ARE MAINTAINED BY THE PERSON OR AN**
22 **AGENT OF THE PERSON.**

23 **3-907.**

24 **(A) SUBJECT TO SUBSECTION (C) OF THIS SECTION, IF THE COMMISSIONER**
25 **IS DENIED ACCESS TO A PLACE OF BUSINESS OR PLACE OF WORK AFTER MAKING A**
26 **PROPER REQUEST TO THE OWNER, LESSEE, EMPLOYER, OR OTHER PERSON IN**
27 **CHARGE OF ACCESS TO THE PLACE OF BUSINESS OR PLACE OF WORK, THE**
28 **COMMISSIONER MAY APPLY TO THE DISTRICT COURT FOR AN ADMINISTRATIVE**
29 **SEARCH WARRANT UNDER THIS SECTION.**

30 **(B) EACH APPLICATION UNDER THIS SECTION SHALL:**

1 **(1) STATE THE NATURE, PURPOSE, AND SCOPE OF THE INSPECTION;**
2 **AND**

3 **(2) SHOW THAT:**

4 **(I) THE APPLICANT IS AUTHORIZED BY LAW TO INSPECT THE**
5 **PLACE OF BUSINESS OR PLACE OF WORK TO WHICH ACCESS WAS DENIED;**

6 **(II) THE APPLICANT REQUESTED ACCESS AT A REASONABLE**
7 **TIME AND THE ACCESS WAS DENIED; AND**

8 **(III) THE INSPECTION IS FOR A PURPOSE RELATED TO THIS**
9 **SUBTITLE.**

10 **(C) THE COMMISSIONER MAY NOT SUBMIT AN APPLICATION UNDER**
11 **SUBSECTION (A) OF THIS SECTION UNLESS THE SUBMISSION IS APPROVED BY THE**
12 **ATTORNEY GENERAL.**

13 **(D) ON A SHOWING OF PROBABLE CAUSE, THE DISTRICT COURT SHALL**
14 **ISSUE THE ADMINISTRATIVE SEARCH WARRANT AUTHORIZING THE COMMISSIONER**
15 **OR AUTHORIZED REPRESENTATIVE TO ENTER AND INSPECT THE PLACE OF**
16 **BUSINESS OR PLACE OF WORK, EXAMINE AND COPY RECORDS, AND TAKE OTHER**
17 **NECESSARY ACTIONS TO ENFORCE COMPLIANCE WITH THIS SUBTITLE.**

18 **3-908.**

19 **(A) IN ENFORCING THIS SUBTITLE, THE COMMISSIONER MAY:**

20 **(1) ADMINISTER OATHS AND QUESTION WITNESSES ON RECORD AND**
21 **UNDER OATH; AND**

22 **(2) ISSUE A SUBPOENA FOR:**

23 **(I) THE PRODUCTION OF A PERSON'S BOOKS, DOCUMENTS,**
24 **PAPERS, AND RECORDS; AND**

25 **(II) THE ATTENDANCE OF A WITNESS TO TESTIFY.**

26 **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, IF A PERSON FAILS TO**
27 **COMPLY WITH A SUBPOENA ISSUED UNDER SUBSECTION (A)(2) OF THIS SECTION OR**
28 **FAILS TO TESTIFY ON A MATTER ON WHICH THE PERSON MAY LAWFULLY BE**
29 **INTERROGATED, ON A COMPLAINT FILED BY THE COMMISSIONER, THE CIRCUIT**
30 **COURT FOR THE COUNTY IN WHICH THE PERSON RESIDES OR IS PRESENT MAY PASS**

1 AN ORDER DIRECTING COMPLIANCE WITH THE SUBPOENA OR COMPELLING
2 TESTIMONY.

3 (C) THE COMMISSIONER MAY NOT FILE A COMPLAINT TO ENFORCE A
4 SUBPOENA UNLESS THE FILING IS APPROVED BY THE ATTORNEY GENERAL.

5 (D) (1) A PERSON MAY NOT BE EXCUSED, ON THE GROUNDS THAT THE
6 TESTIMONY OR EVIDENCE MAY INCRIMINATE THE PERSON OR SUBJECT THE PERSON
7 TO A PENALTY OR FORFEITURE, FROM:

8 (I) ATTENDING AND TESTIFYING AS REQUIRED UNDER THIS
9 SECTION; OR

10 (II) PRODUCING ANY DOCUMENT OR RECORD BEFORE THE
11 COMMISSIONER OR IN A PROCEEDING INITIATED BY THE COMMISSIONER.

12 (2) EXCEPT IN CASES OF PERJURY OR CONTEMPT DURING
13 TESTIMONY, TESTIMONY AND EVIDENCE GIVEN IN ACCORDANCE WITH THIS SECTION
14 MAY NOT BE USED TO CRIMINALLY PROSECUTE AN INDIVIDUAL FOR THE SPECIFIC
15 SUBJECT THE INDIVIDUAL WAS COMPELLED TO TESTIFY OR PRODUCE EVIDENCE
16 ABOUT.

17 **3-909.**

18 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN
19 EMPLOYER THAT FAILS TO PROPERLY CLASSIFY AN EMPLOYEE SHALL BE SUBJECT
20 TO A CIVIL PENALTY OF NOT LESS THAN \$5,000 AND NOT MORE THAN \$10,000 FOR
21 EACH EMPLOYEE NOT PROPERLY CLASSIFIED.

22 (B) AN EMPLOYER THAT KNOWINGLY FAILS TO PROPERLY CLASSIFY AN
23 EMPLOYEE SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND
24 NOT MORE THAN \$25,000 FOR EACH EMPLOYEE NOT PROPERLY CLASSIFIED.

25 (C) A PERSON HAS VIOLATED THIS SUBTITLE AND IS SUBJECT TO A CIVIL
26 PENALTY OF \$5,000 PER OCCURRENCE IF THE PERSON:

27 (1) HINDERS OR DELAYS THE COMMISSIONER'S INVESTIGATION
28 UNDER THIS SUBTITLE;

29 (2) REFUSES TO ADMIT, AT REASONABLE TIMES, THE COMMISSIONER
30 TO A PLACE OF BUSINESS OR WORK;

1 **(3) FAILS TO GIVE INFORMATION LAWFULLY REQUIRED FOR THE**
2 **PROPER ENFORCEMENT OF THIS SUBTITLE, ON DEMAND OF THE COMMISSIONER;**

3 **(4) FAILS OR REFUSES TO MAKE RECORDS RELATING TO WORKERS**
4 **ACCESSIBLE TO THE COMMISSIONER; OR**

5 **(5) FALSIFIES RECORDS RELATING TO WORKERS.**

6 **(D) THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF A PENALTY**
7 **FOR MISCLASSIFICATION OF EMPLOYEES BASED ON:**

8 **(1) THE NUMBER OF MISCLASSIFIED EMPLOYEES;**

9 **(2) THE DURATION OF THE MISCLASSIFICATION;**

10 **(3) THE SEVERITY OF THE VIOLATION;**

11 **(4) THE IMPACT ON THE AFFECTED EMPLOYEES, INCLUDING UNPAID**
12 **WAGES, BENEFITS, AND TAXES; AND**

13 **(5) WHETHER THE EMPLOYER HAS PREVIOUSLY VIOLATED THIS**
14 **SUBTITLE.**

15 **(E) IN ADDITION TO THE PENALTIES PROVIDED IN SUBSECTIONS (A)**
16 **THROUGH (C) OF THIS SECTION, AN EMPLOYER MAY BE ORDERED BY THE**
17 **COMMISSIONER TO:**

18 **(1) PAY RESTITUTION FOR ECONOMIC DAMAGES SUFFERED BY AN**
19 **EMPLOYEE AS A RESULT OF THE EMPLOYER'S FAILURE TO PROPERLY CLASSIFY THE**
20 **EMPLOYEE; AND**

21 **(2) COME INTO COMPLIANCE WITH THIS SUBTITLE.**

22 **(F) IN ADDITION TO ANY OTHER RESTITUTION OR BENEFIT TO WHICH AN**
23 **EMPLOYEE MAY BE ENTITLED UNDER THIS SUBTITLE, ONE-THIRD OF THE AMOUNT**
24 **OF A CIVIL PENALTY IMPOSED UNDER THIS SECTION FOR A KNOWING VIOLATION**
25 **SHALL BE PAYABLE DIRECTLY TO THE AFFECTED EMPLOYEE.**

26 **3-910.**

27 **(A) IF, AFTER AN INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
28 **A PERSON HAS VIOLATED OR FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS**
29 **SUBTITLE, THE COMMISSIONER SHALL ISSUE A CITATION WITH REASONABLE**
30 **PROMPTNESS.**

1 **(B) EACH CITATION ISSUED UNDER SUBSECTION (A) OF THIS SECTION**
2 **SHALL:**

3 **(1) BE IN WRITING;**

4 **(2) IDENTIFY EACH PERSON ALLEGED TO HAVE VIOLATED THIS**
5 **SUBTITLE AS A RESPONDENT TO THE CITATION;**

6 **(3) DESCRIBE, WITH PARTICULARITY, THE NATURE OF THE ALLEGED**
7 **VIOLATION;**

8 **(4) REFERENCE THE PROVISION OF THIS SUBTITLE OR REGULATION**
9 **ADOPTED UNDER THIS SUBTITLE THAT THE PERSON IS ALLEGED TO HAVE**
10 **VIOLATED;**

11 **(5) STATE THE CIVIL PENALTY, IF ANY, THE COMMISSIONER**
12 **PROPOSES TO ASSESS UNDER THIS SUBTITLE;**

13 **(6) STATE THE AMOUNT OF RESTITUTION, IF ANY, ORDERED BY THE**
14 **COMMISSIONER TO BE PAID TO AN EMPLOYEE UNDER § 3-909(E) OF THIS SUBTITLE;**

15 **(7) STATE ALL ACTIONS NECESSARY TO COME INTO COMPLIANCE**
16 **WITH THIS SUBTITLE AND SET A REASONABLE PERIOD FOR THE RESPONDENT TO**
17 **TAKE CORRECTIVE ACTION;**

18 **(8) NOTIFY THE RESPONDENT THAT, WITHIN 30 DAYS AFTER RECEIPT**
19 **OF THE CITATION, THE RESPONDENT MAY REQUEST AN ADMINISTRATIVE HEARING**
20 **ON THE CITATION AND PENALTY AND THAT THE HEARING WILL BE CONDUCTED IN**
21 **ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE;**
22 **AND**

23 **(9) NOTIFY THE RESPONDENT THAT IF A HEARING IS NOT REQUESTED**
24 **WITHIN 30 DAYS OF MAILING THE CITATION, THE CITATION BECOMES A FINAL**
25 **ORDER OF THE COMMISSIONER.**

26 **(C) THE COMMISSIONER SHALL SEND A CITATION ISSUED UNDER**
27 **SUBSECTION (A) OF THIS SECTION BY CERTIFIED AND FIRST-CLASS MAIL.**

28 **3-911.**

29 **(A) WITHIN 30 DAYS AFTER THE COMMISSIONER MAELS A CITATION ISSUED**
30 **UNDER § 3-910(A) OF THIS SUBTITLE, THE RESPONDENT MAY SUBMIT A WRITTEN**

1 REQUEST FOR A HEARING ON THE CITATION AND PROPOSED PENALTY AND
2 RESTITUTION, IF ANY.

3 (B) THE CITATION AND PROPOSED PENALTY AND RESTITUTION WILL BE
4 CONVERTED TO A FINAL ORDER OF THE COMMISSIONER IF AN ADMINISTRATIVE
5 HEARING IS NOT REQUESTED BY THE RESPONDENT WITHIN 30 DAYS AFTER THE
6 RECEIPT OF THE CITATION.

7 (C) IF THE RESPONDENT REQUESTS A HEARING, THE COMMISSIONER
8 SHALL DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY
9 TO HOLD A HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
10 GOVERNMENT ARTICLE.

11 (D) AN ADMINISTRATIVE LAW JUDGE SHALL ISSUE FINDINGS OF FACT,
12 CONCLUSIONS OF LAW, AND A FINAL ORDER AFFIRMING, MODIFYING, OR VACATING
13 ALL OR PART OF THE CITATION AND ANY PROPOSED PENALTY OR RESTITUTION.

14 (E) THE COMMISSIONER HAS THE BURDEN OF PROOF, BY A
15 PREPONDERANCE OF THE EVIDENCE, TO SHOW THAT:

16 (1) THE RESPONDENT HAS VIOLATED THIS SUBTITLE; AND

17 (2) ANY PROPOSED PENALTY, RESTITUTION, AND ORDER FOR
18 COMPLIANCE IS APPROPRIATE.

19 (F) WITHIN 30 DAYS AFTER THE ISSUANCE OF A FINAL ORDER UNDER
20 SUBSECTION (D) OF THIS SECTION, A RESPONDENT FOUND IN VIOLATION OF THIS
21 SUBTITLE SHALL:

22 (1) PAY ANY ASSESSED PENALTIES TO THE COMMISSIONER;

23 (2) PAY ANY ORDERED RESTITUTION TO OR ON BEHALF OF AN
24 EMPLOYEE WHOM THE RESPONDENT FAILED TO PROPERLY CLASSIFY; AND

25 (3) TAKE ALL OTHER ACTIONS SPECIFIED AS NECESSARY TO COME
26 INTO COMPLIANCE WITH THIS SUBTITLE.

27 (G) (1) A PARTY AGGRIEVED BY A FINAL ORDER OF THE COMMISSIONER
28 UNDER SUBSECTION (I) OF THIS SECTION MAY SEEK JUDICIAL REVIEW AND APPEAL
29 UNDER §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

1 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A**
2 **FINAL ORDER OF THE COMMISSIONER IS STAYED UNTIL THE TIME FOR SEEKING**
3 **JUDICIAL REVIEW EXPIRES.**

4 **(II) IF A TIMELY APPEAL IS FILED, THE ORDER IS STAYED UNTIL**
5 **FINAL DISPOSITION BY THE COURT.**

6 **(3) THE COMMISSIONER MAY SEEK JUDICIAL ENFORCEMENT OF A**
7 **FINAL ORDER.**

8 **(H) A FINAL ORDER OF THE COMMISSIONER SHALL REMAIN IN EFFECT**
9 **AGAINST A SUCCESSOR OF THE PERSON AGAINST WHICH THE FINAL ORDER WAS**
10 **ISSUED.**

11 **(I) A PREVIOUS FINAL ORDER FINDING A VIOLATION OF THIS SUBTITLE BY**
12 **AN EMPLOYER SHALL ESTABLISH THAT THE EMPLOYER'S OR SUCCESSOR'S**
13 **SUBSEQUENT VIOLATIONS WERE COMMITTED KNOWINGLY.**

14 **(J) THE REMEDIES INCLUDED IN A FINAL ORDER OF A COURT OR AN**
15 **ADMINISTRATIVE UNIT REGARDING THE FAILURE OF AN EMPLOYER TO PROPERLY**
16 **CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE IS IN ADDITION TO ANY OTHER REMEDY**
17 **AVAILABLE TO THE EMPLOYEE FOR A VIOLATION OF ANOTHER STATE LAW,**
18 **INCLUDING THE MARYLAND WAGE AND HOUR LAW, TITLE 17, SUBTITLE 2 OF THE**
19 **STATE FINANCE AND PROCUREMENT ARTICLE, OR TITLE 18 OF THE STATE**
20 **FINANCE AND PROCUREMENT ARTICLE, THAT RESULTED FROM THE**
21 **MISCLASSIFICATION.**

22 3-912.

23 (a) As authorized by State and federal law, units within the Maryland
24 Department of Labor and the Department of Budget and Management, the Secretary of
25 State, the Comptroller, the Maryland Insurance Administration, **THE OFFICE OF THE**
26 **ATTORNEY GENERAL**, and [other State agencies] **THE STATE DEPARTMENT OF**
27 **ASSESSMENTS AND TAXATION** shall cooperate and share information concerning any
28 suspected failure to properly classify [an individual] **A WORKER** as an employee.

29 (b) [On a showing by clear and convincing evidence that a violation of § 3-904 of
30 this subtitle has occurred and as authorized by federal and State law, the] **THE**
31 **Commissioner shall refer [any complaint that alleges] a SUSPECTED violation of § 13-1007**
32 **or § 13-1024 of the Tax – General Article to the:**

33 (1) Comptroller;

34 (2) State's Attorney with jurisdiction over the alleged violation;

- 1 (3) U.S. Department of Justice;
- 2 (4) U.S. Department of Labor; and
- 3 (5) U.S. Department of the Treasury.

4 (C) (1) EACH YEAR, THE COMMISSIONER SHALL DISSEMINATE ALL FINAL
5 ORDERS ISSUED UNDER THIS SUBTITLE TO EACH AGENCY LISTED IN SUBSECTION (A)
6 OF THIS SECTION.

7 (2) AN AGENCY LISTED UNDER SUBSECTION (A) OF THIS SECTION
8 MAY NOT ISSUE OR RENEW A LICENSE TO A RESPONDENT IN VIOLATION OF THIS
9 SUBTITLE UNTIL THE RESPONDENT COMES INTO COMPLIANCE WITH THE FINAL
10 ORDER.

11 (3) THE COMMISSIONER SHALL ADOPT PROCEDURES FOR ADVISING
12 THE AGENCIES LISTED UNDER SUBSECTION (A) OF THIS SECTION OF WHEN A
13 RESPONDENT COMES INTO COMPLIANCE WITH A FINAL ORDER ISSUED UNDER THIS
14 SUBTITLE.

15 3-913.

16 (a) (1) Except as provided in paragraph (2) of this subsection, an [individual]
17 EMPLOYEE who has not been properly classified as an employee may bring a civil action
18 [for economic damages] against the employer for any violation of this subtitle.

19 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, IF
20 AN EMPLOYER FAILS TO PROPERLY CLASSIFY 10 OR MORE EMPLOYEES RESULTING
21 IN ECONOMIC DAMAGES TOTALING \$25,000 OR MORE, THE ATTORNEY GENERAL
22 MAY BRING AN ACTION AGAINST THE EMPLOYER ON BEHALF OF THE EMPLOYEES
23 ALLEGED TO HAVE BEEN IMPROPERLY CLASSIFIED FOR A VIOLATION OF THIS
24 SUBTITLE.

25 (3) An [individual] EMPLOYEE OR THE ATTORNEY GENERAL may not
26 bring a civil action [under this section if] ON THE SAME FACTS AND ISSUES ADDRESSED
27 BY a final order of [an administrative unit or of a court has been issued under § 3-906 of]
28 THE COMMISSIONER ISSUED IN ACCORDANCE WITH this subtitle.

29 (4) (I) ON THE FILING OF AN ACTION BY AN EMPLOYEE OR THE
30 ATTORNEY GENERAL UNDER PARAGRAPH (1) OR (2) OF THIS SUBSECTION IN A
31 COURT OF COMPETENT JURISDICTION CONCERNING A MATTER UNDER
32 INVESTIGATION OR SUBJECT TO ADMINISTRATIVE PROCEEDINGS BY THE
33 COMMISSIONER, THE COMMISSIONER SHALL:

1 **1. STAY THE INVESTIGATION OR ADMINISTRATIVE**
2 **PROCEEDING UNTIL THE COURT ACTION IS RESOLVED; AND**

3 **2. NOTIFY THE PARTIES OF THE RESOLUTION.**

4 **(II) ON RESOLUTION OF THE COURT ACTION, THE**
5 **COMMISSIONER MAY RESUME THE INVESTIGATION OR ADMINISTRATIVE**
6 **PROCEEDINGS IF NECESSARY AND APPROPRIATE, TAKING INTO CONSIDERATION**
7 **THE FINDINGS AND OUTCOMES OF THE COURT ACTION.**

8 (b) An action filed under this section shall be filed within 3 years after the date
9 [the cause of action accrues] **ON WHICH THE MISCLASSIFIED WORKER LAST**
10 **PERFORMED WORK FOR THE ALLEGED EMPLOYER.**

11 (c) If the court determines that an [individual] **EMPLOYEE** or class of
12 [individuals] **EMPLOYEEES** is entitled to judgment in an action against an employer filed in
13 accordance with this section, the court may award each [individual] **EMPLOYEE:**

14 (1) [any damages to which the individual may be entitled under subsection
15 (a) of this section] **ECONOMIC DAMAGES;**

16 (2) an additional amount up to three times the amount of any [such]
17 **ECONOMIC** damages, if the employer knowingly failed to properly classify the [individual]
18 **EMPLOYEE;**

19 (3) reasonable counsel fees and other costs of the action; and

20 (4) any other appropriate relief.

21 **(D) IF A FINAL ORDER OF THE COURT FINDS THAT AN EMPLOYER HAS**
22 **FAILED TO PROPERLY CLASSIFY AN EMPLOYEE IN A CIVIL ACTION BROUGHT BY THE**
23 **ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL NOTIFY THE AGENCIES**
24 **LISTED IN § 3-912(A) OF THIS SUBTITLE.**

25 **(E) BEFORE INITIATING AN ACTION IN ACCORDANCE WITH THIS SUBTITLE,**
26 **THE ATTORNEY GENERAL MAY CONDUCT AN INVESTIGATION.**

27 **3-914.**

28 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
29 **INDICATED.**

30 **(2) “LICENSE” MEANS A LICENSE, CERTIFICATE, REGISTRATION,**

1 PERMIT, OR OTHER AUTHORIZATION THAT:

2 (I) IS ISSUED BY A LICENSING AUTHORITY;

3 (II) IS SUBJECT TO SUSPENSION, REVOCATION, FORFEITURE,
4 OR TERMINATION BY A LICENSING AUTHORITY; AND

5 (III) IS NECESSARY FOR A PERSON TO PRACTICE OR ENGAGE IN
6 A PARTICULAR BUSINESS, OCCUPATION, OR PROFESSION.

7 (3) "LICENSEE" MEANS AN EMPLOYER HOLDING A VALID LICENSE.

8 (4) (I) "LICENSING AUTHORITY" MEANS A UNIT OF THE DIVISION
9 OF OCCUPATIONAL AND PROFESSIONAL LICENSING IN THE MARYLAND
10 DEPARTMENT OF LABOR.

11 (II) "LICENSING AUTHORITY" INCLUDES:

12 1. THE ELEVATOR SAFETY REVIEW BOARD;

13 2. THE MARYLAND HOME IMPROVEMENT COMMISSION;

14 3. THE STATE BOARD OF ELECTRICIANS;

15 4. THE STATE BOARD OF HEATING, VENTILATION,
16 AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS;

17 5. THE STATE BOARD OF PLUMBING;

18 6. THE MARYLAND BOARD OF PUBLIC ACCOUNTANCY;

19 AND

20 7. THE MARYLAND BOARD OF INDIVIDUAL TAX
21 PREPARERS.

22 (B) (1) THE COMMISSIONER SHALL NOTIFY THE APPLICABLE LICENSING
23 AUTHORITY WHEN A LICENSEE IS FOUND IN VIOLATION OF § 3-904 OF THIS
24 SUBTITLE BY A FINAL ORDER OF A COURT OR AN ADMINISTRATIVE UNIT AND:

25 (I) HAS NOT PAID ALL PENALTIES ASSESSED UNDER THIS
26 SUBTITLE FOR A VIOLATION OF § 3-904 OF THIS SUBTITLE; AND

27 (II) WITHIN 45 DAYS AFTER ISSUANCE OF THE FINAL ORDER OF

1 A COURT OR ADMINISTRATIVE UNIT, HAS FAILED TO COMPLY WITH A FINAL ORDER
2 ISSUED UNDER § 3-907 OF THIS SUBTITLE FOR FAILING TO PROPERLY CLASSIFY AN
3 EMPLOYEE.

4 (2) THE COMMISSIONER SHALL NOTIFY THE APPLICABLE LICENSING
5 AUTHORITY WHEN A LICENSEE IS FOUND IN VIOLATION OF § 3-904 OR § 3-916 OF
6 THIS SUBTITLE BY A FINAL ORDER OF A COURT OR AN ADMINISTRATIVE UNIT.

7 (C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IF A LICENSING
8 AUTHORITY RECEIVES A NOTIFICATION MADE UNDER SUBSECTION (B)(1) OF THIS
9 SECTION, THE LICENSING AUTHORITY SHALL SUSPEND OR REVOKE THE LICENSE OF
10 THE LICENSEE.

11 (D) (1) BEFORE SUSPENDING OR REVOKING A LICENSE UNDER
12 SUBSECTION (C) OF THIS SECTION, A LICENSING AUTHORITY SHALL SEND WRITTEN
13 NOTICE OF THE PROPOSED ACTION TO THE LICENSEE WHOSE LICENSE IS SUBJECT
14 TO SUSPENSION OR REVOCATION, INCLUDING NOTICE OF THE LICENSEE'S RIGHT TO
15 CONTEST THE IDENTITY OF THE LICENSEE WHOSE LICENSE IS TO BE SUSPENDED OR
16 REVOKED.

17 (2) (I) A LICENSEE MAY APPEAL A DECISION OF A LICENSING
18 AUTHORITY TO SUSPEND OR REVOKE THE LICENSE IN ACCORDANCE WITH TITLE 10,
19 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

20 (II) AT A HEARING INITIATED UNDER SUBPARAGRAPH (I) OF
21 THIS PARAGRAPH, THE ISSUE SHALL BE LIMITED TO WHETHER THE COMMISSIONER
22 HAS MISTAKEN THE IDENTITY OF THE LICENSEE WHOSE LICENSE HAS BEEN
23 SUSPENDED OR REVOKED.

24 (E) (1) A LICENSING AUTHORITY MAY NOT REINSTATE A LICENSE THAT
25 HAS BEEN SUSPENDED OR REVOKED UNDER SUBSECTION (C) OF THIS SECTION
26 BASED ON A NOTIFICATION MADE UNDER SUBSECTION (B)(1) OF THIS SECTION
27 UNTIL THE COMMISSIONER PROVIDES NOTICE TO THE LICENSING AUTHORITY
28 UNDER PARAGRAPH (2) OF THIS SUBSECTION.

29 (2) THE COMMISSIONER SHALL NOTIFY THE LICENSING AUTHORITY
30 WITHIN 10 DAYS AFTER THE COMMISSIONER FIRST RECEIVES:

31 (I) A COURT ORDER TO REINSTATE THE LICENSE; OR

32 (II) WITH RESPECT TO A LICENSEE WHO IS SUBJECT TO A FINAL
33 ORDER OF A COURT OR AN ADMINISTRATIVE UNIT FOR A VIOLATION OF § 3-904 OF
34 THIS SUBTITLE, NOTICE THAT THE LICENSEE HAS COMPLIED WITH THE ORDER IN

1 FULL.

2 (3) A LICENSING AUTHORITY SHALL REINSTATE IMMEDIATELY A
3 LICENSE THAT WAS SUSPENDED OR REVOKED UNDER SUBSECTION (C) OF THIS
4 SECTION IF:

5 (I) NOTIFIED BY THE COMMISSIONER THAT THE LICENSE
6 SHOULD BE REINSTATED; AND

7 (II) THE LICENSEE OTHERWISE QUALIFIES FOR THE LICENSE.

8 (4) WITH RESPECT TO A LICENSE THAT HAS BEEN SUSPENDED OR
9 REVOKED UNDER SUBSECTION (C) OF THIS SECTION BASED ON A NOTIFICATION
10 UNDER SUBSECTION (B)(2) OF THIS SECTION, A LICENSING AUTHORITY MAY
11 REINSTATE THE LICENSE ONLY IF:

12 (I) THE INDIVIDUAL WHOSE LICENSE HAS BEEN REVOKED OR
13 SUSPENDED SUBMITS A WRITTEN REQUEST TO THE LICENSING AUTHORITY;

14 (II) THE LICENSING AUTHORITY HOLDS A HEARING ON THE
15 REQUEST;

16 (III) THE LICENSING AUTHORITY, BY AN AFFIRMATIVE VOTE OF
17 A MAJORITY OF ITS MEMBERS, DETERMINES THAT ANY CONDITIONS OF THE
18 SUSPENSION OR REVOCATION HAVE BEEN FULFILLED AND VOTES TO REINSTATE
19 THE LICENSE; AND

20 (IV) THE INDIVIDUAL PAYS TO THE LICENSING AUTHORITY A
21 REINSTATEMENT FEE SET BY THE LICENSING AUTHORITY.

22 (F) (1) ADVERSE LICENSING ACTIONS TAKEN UNDER THIS SECTION MAY
23 BE IMPOSED IN ADDITION TO ANY OTHER ACTIONS TAKEN IN THE ENFORCEMENT OF
24 THIS SUBTITLE.

25 (2) ADVERSE LICENSING ACTIONS TAKEN UNDER THIS SECTION
26 SHALL BE IN EFFECT AGAINST:

27 (I) A SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT:

28 1. HAS ONE OR MORE OF THE SAME PRINCIPALS OR
29 OFFICERS AS THE LICENSEE AGAINST WHOM THE ADVERSE ACTION WAS TAKEN,
30 UNLESS THE PRINCIPAL OR OFFICER DID NOT OR, WITH THE EXERCISE OF
31 REASONABLE DILIGENCE, COULD NOT HAVE KNOWN OF THE VIOLATION FOR WHICH

1 THE ADVERSE ACTION WAS TAKEN; AND

2 2. IS ENGAGED IN OR INTENDS TO ENGAGE IN THE SAME
3 OR EQUIVALENT TRADE OR ACTIVITY; AND

4 (II) AN INDIVIDUAL LICENSEE WHO WAS AN OFFICER, A
5 DIRECTOR, A CONTROLLING SHAREHOLDER, A PARTNER, OR A MANAGER OF THE
6 EMPLOYER AGAINST WHOM THE ADVERSE ACTION WAS TAKEN UNLESS THE
7 OFFICER, DIRECTOR, CONTROLLING SHAREHOLDER, PARTNER, OR MANAGER DID
8 NOT OR, WITH THE EXERCISE OF REASONABLE DILIGENCE, COULD NOT HAVE KNOWN
9 OF THE VIOLATION FOR WHICH THE ADVERSE ACTION WAS TAKEN.

10 3–915.

11 (a) [Where] IF, after AN investigation, the Commissioner issues a citation for a
12 knowing violation of this subtitle [or regulations adopted under this subtitle] by an
13 employer engaged in work on a contract with a public body, the Commissioner shall
14 promptly notify the public body AND THE GENERAL CONTRACTOR.

15 **Article – State Finance and Procurement**

16 16–203.

17 (a) A person may be debarred from entering into a contract with the State if the
18 person, an officer, partner, controlling stockholder or principal of that person, or any other
19 person substantially involved in that person’s contracting activities has:

20 (9) been found to have **REPEATEDLY**, willfully, or knowingly violated Title
21 17, Subtitle 2 or Title 18 of this article if:

22 (i) 1. the finding was made by a court; and

23 2. the decision of the court became final; or

24 (ii) 1. the finding was made in **ACCORDANCE WITH A FINAL**
25 **ADMINISTRATIVE ORDER OR** a contested case under the Administrative Procedure Act;
26 and

27 2. the finding **MADE IN A CONTESTED CASE** was not
28 overturned on judicial review;

29 (10) been found to have **REPEATEDLY**, willfully, or knowingly violated Title
30 3, Subtitle 3, Subtitle 4, [or] Subtitle 5, **OR SUBTITLE 9** or Title 5 of the Labor and
31 Employment Article if:

1 (i) 1. the finding was made by a court; and

2 2. the decision of the court became final; or

3 (ii) 1. the finding was made in **ACCORDANCE WITH A FINAL**
 4 **ADMINISTRATIVE ORDER OR** a contested case under the Administrative Procedure Act;
 5 and

6 2. **THE FINDING WAS MADE IN A CONTESTED CASE**, the
 7 finding was not overturned on judicial review;

8 17-224.

9 (a) (1) If an employee under a public work contract is paid less than the
 10 prevailing wage rate for that employee's classification for the work performed, the employee
 11 may file a complaint with the Commissioner.

12 (2) Except as otherwise provided in this section, a complaint filed under
 13 this section shall be subject to the provisions of § 17-221 of this subtitle.

14 (3) If the Commissioner's investigation determines that the employer
 15 violated provisions of this subtitle, the Commissioner shall try to resolve the issue
 16 informally.

17 (4) (i) If the Commissioner is unable to resolve the matter informally,
 18 the Commissioner **[shall] MAY:**

19 1. issue an order for a hearing in accordance with § 17-221
 20 of this subtitle; **OR**

21 2. **REFER THE MATTER TO THE OFFICE OF THE**
 22 **ATTORNEY GENERAL TO FILE A CIVIL ACTION.**

23 (ii) If, at the conclusion of a hearing ordered under subparagraph
 24 **[(i)] (D)1** of this paragraph, the Commissioner determines that the employee is entitled to
 25 restitution under this subtitle, the Commissioner shall issue an order in accordance with §
 26 17-221 of this subtitle.

27 (iii) If an employer of an employee found to be entitled to restitution
 28 under subparagraph (ii) of this paragraph is no longer working under a contract with a
 29 public body, the Commissioner may order that restitution be paid directly by the employer
 30 to the employee within a reasonable period of time, as determined by the Commissioner.

31 (5) If an employer fails to comply with an order to pay restitution to an
 32 employee under paragraph (4)(iii) of this subsection, the Commissioner or the employee

1 may bring a civil action to enforce the order in the circuit court in the county where the
2 employee or employer is located.

3 (b) (1) If an employee under a public work contract is paid less than the
4 prevailing wage rate for that employee's classification for the work performed, the employee
5 **OR THE COMMISSIONER ON BEHALF OF THE EMPLOYEE** is entitled to sue to recover the
6 difference between the prevailing wage rate and the amount received by the employee.

7 (2) **IN ACCORDANCE WITH TITLE 6, SUBTITLE 10 OF THE STATE**
8 **GOVERNMENT ARTICLE, THE ATTORNEY GENERAL MAY SUE TO RECOVER THE**
9 **DIFFERENCE BETWEEN THE PREVAILING WAGE RATE AND THE AMOUNT RECEIVED**
10 **BY EMPLOYEES IF:**

11 (I) **THERE ARE 10 OR MORE AFFECTED EMPLOYEES WHO ARE**
12 **UNDER A PUBLIC WORK CONTRACT AND ARE PAID LESS THAN THE PREVAILING**
13 **WAGE RATE FOR THE CLASSIFICATION FOR THE WORK PERFORMED; AND**

14 (II) **THE AMOUNT OF THE TOTAL WAGES UNDERPAID FOR ALL**
15 **AFFECTED EMPLOYEES IS NOT LESS THAN \$25,000.**

16 (3) A determination by the Commissioner that a contractor is required to
17 make restitution under subsection (a)(4) of this section does not preclude an employee from
18 filing an action under this subsection.

19 (c) (1) An action under this section is considered to be a suit for wages.

20 (2) A judgment in an action under this section shall have the same force
21 and effect as any other judgment for wages.

22 (3) An action brought under this section for a violation of this subtitle shall
23 be filed within 3 years from the date the affected employee knew or should have known of
24 the violation.

25 (d) (1) The failure of an employee to protest orally or in writing the payment
26 of a wage that is less than the prevailing wage rate is not a bar to recovery in an action
27 under this section.

28 (2) A contract or other written document in which an employee states that
29 the employee shall be paid less than the amount required by this subtitle does not bar the
30 recovery of any remedy required under this subtitle.

31 (e) (1) Except as provided in paragraph (3) of this subsection, if the court in an
32 action filed under this section finds that an employer paid an employee less than the
33 requisite prevailing wage, the court shall award the affected employee the difference
34 between the wage actually paid and the prevailing wage at the time that the services were
35 rendered.

1 (2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe
2 benefit contributions owed for an employee in accordance with this section shall be paid to
3 the appropriate benefit fund, plan, or program.

4 (ii) In the absence of an appropriate benefit fund, plan, or program,
5 the amount owed for fringe benefits for an employee shall be paid directly to the employee.

6 (3) The court may order the payment of double damages or treble damages
7 under this section if the court finds that the employer withheld wages or fringe benefits
8 willfully and knowingly or with deliberate ignorance or reckless disregard of the employer's
9 obligations under this subtitle.

10 (4) **IN ADDITION TO ANY RELIEF PROVIDED IN ACCORDANCE WITH**
11 **PARAGRAPHS (1) THROUGH (3) OF THIS SUBSECTION, THE COMMISSIONER SHALL**
12 **BE ENTITLED TO AN AWARD OF LIQUIDATED DAMAGES AS PROVIDED IN § 17-222 OF**
13 **THIS SUBTITLE.**

14 (5) In an action under this section, the court shall award a prevailing
15 plaintiff reasonable counsel fees and costs.

16 [(5)] (6) If the court finds that an employee submitted a false or
17 fraudulent claim in an action under this section, the court may order the employee to pay
18 the employer reasonable counsel fees and costs.

19 [(6)] (7) The contractor and subcontractor shall be jointly and severally
20 liable for any violation of the subcontractor's obligations under this section.

21 (f) (1) Subject to paragraph (2) of this subsection, an action filed in accordance
22 with this section may be brought by:

23 (I) one or more employees on behalf of:

- 24 1. that employee or group of employees; and [on behalf of]
- 25 2. other employees similarly situated; OR

26 (II) **THE COMMISSIONER ON BEHALF OF:**

- 27 1. **ONE OR MORE EMPLOYEES; OR**
- 28 2. **ONE OR MORE EMPLOYEES AND OTHER EMPLOYEES**

29 **SIMILARLY SITUATED.**

1 (2) An employee may not be a party plaintiff to an action brought under
2 this section unless that employee files written consent with the court in which the action is
3 brought to become a party to the action.

4 (g) **BEFORE INITIATING AN ACTION UNDER THIS SUBTITLE, THE ATTORNEY
5 GENERAL MAY CONDUCT AN INVESTIGATION IN ACCORDANCE WITH TITLE 6,
6 SUBTITLE 10 OF THE STATE GOVERNMENT ARTICLE.**

7 (H) (1) A person found to have made a false or fraudulent representation or
8 omission known to be false or made with deliberate ignorance or reckless disregard for its
9 truth or falsity regarding a material fact in connection with any prevailing wage payroll
10 record required by § 17–220 of this subtitle is liable for a civil penalty of \$1,000 for each
11 falsified record.

12 (2) The penalty shall be recoverable in a civil action filed in accordance
13 with this section and paid to the State General Fund.

14 [(h)] (I) (1) An employer may not discharge, threaten, or otherwise retaliate
15 or discriminate against an employee regarding compensation or other terms and conditions
16 of employment because that employee or an organization or other person acting on behalf
17 of that employee:

18 [(1)] (I) reports or makes a complaint under this subtitle or otherwise
19 asserts the worker's rights under this section; or

20 [(2)] (II) participates in any investigation, hearing, or inquiry held by the
21 Commissioner under § 17–221 of this subtitle.

22 (2) **IF A VIOLATION OF THIS SUBSECTION IS FOUND AFTER A HEARING
23 UNDER § 17–221 OF THIS SUBTITLE, THE COMMISSIONER SHALL ORDER THAT THE
24 EMPLOYER:**

25 (I) **REINSTATE THE EMPLOYEE OR PROVIDE THE EMPLOYEE
26 RESTITUTION, AS APPROPRIATE; AND**

27 (II) **PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE TIMES
28 THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED FROM THE DATE
29 OF THE VIOLATION.**

30 [(i)] (J) (1) A contractor or subcontractor may not retaliate or discriminate
31 against an employee in violation of this section.

32 (2) If a contractor or subcontractor retaliates or discriminates against an
33 employee in violation of this section, the affected employee **OR THE COMMISSIONER ON**

1 **BEHALF OF THE EMPLOYEE** may file an action in any court of competent jurisdiction
2 within 3 years from the employee's knowledge of the action.

3 (3) If the court finds in favor of the employee in an action brought under
4 this subsection, the court shall order that the contractor or subcontractor:

5 (i) reinstate the employee or provide the employee restitution, as
6 appropriate;

7 (ii) pay the employee an amount equal to three times the amount of
8 back wages and fringe benefits calculated from the date of the violation; and

9 (iii) pay reasonable counsel fees and other costs.

10 18–109.

11 (a) (1) If an employee was paid less than the wage rate required under this
12 title the employee **OR THE COMMISSIONER ON BEHALF OF THE EMPLOYEE AND OTHER**
13 **EMPLOYEES SIMILARLY SITUATED** is entitled to sue to recover the amount of the
14 difference between the wage rate required under this title and the amount received by the
15 employee.

16 (2) A determination by the Commissioner that an employer is required to
17 make restitution does not preclude an employee from filing an action under this section.

18 **(3) IN AN ACTION BROUGHT BY THE COMMISSIONER UNDER THIS**
19 **SECTION, THE COMMISSIONER SHALL BE ENTITLED TO RECOVER LIQUIDATED**
20 **DAMAGES AS PROVIDED IN § 18–108 OF THIS SUBTITLE.**

21 (b) (1) An action under this section is considered to be a suit for wages.

22 (2) A judgment in an action under this section shall have the same force
23 and effect as any other judgment for wages.

24 (c) The failure of an employee to protest orally or in writing the payment of a
25 wage that is less than the wage rate required under this title is not a bar to recovery in an
26 action under this section.

27 **Article – State Government**

28 **SUBTITLE 10. WORKER PROTECTION UNIT.**

29 **6–1001.**

30 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
31 **INDICATED.**

1 **(B) (1) “ECONOMIC DAMAGES” MEANS ANY FINANCIAL LOSS INCURRED**
2 **BY A WORKER AS A RESULT OF RETALIATION BY A PERSON IN VIOLATION OF THIS**
3 **SUBTITLE.**

4 **(2) “ECONOMIC DAMAGES” INCLUDES:**

5 **(I) UNPAID WAGES; AND**

6 **(II) LOST BENEFITS.**

7 **(C) “EMPLOYER” MEANS ANY PERSON, OR A SUCCESSOR OF THE PERSON,**
8 **EMPLOYING ONE OR MORE INDIVIDUALS IN THE STATE.**

9 **(D) “SUCCESSOR” MEANS AN EMPLOYER THAT ACQUIRES, THROUGH ANY**
10 **FORM OF TRANSACTION, THE BUSINESS OPERATIONS, ASSETS, WORKFORCE OR**
11 **OTHER SIGNIFICANT ELEMENTS OF ANOTHER EMPLOYER, AND CONTINUES TO**
12 **OPERATE THE BUSINESS IN ESSENTIALLY THE SAME MANNER AS THE PREVIOUS**
13 **EMPLOYER.**

14 **(E) “UNIT” MEANS THE WORKER PROTECTION UNIT.**

15 **(F) “WORKER” MEANS AN INDIVIDUAL PERFORMING SERVICES FOR**
16 **REMUNERATION, INCLUDING AN EMPLOYEE AND INDIVIDUAL CLASSIFIED OR**
17 **ALLEGED TO BE INDEPENDENT CONTRACTORS, REGARDLESS OF THE LEGAL**
18 **RELATIONSHIP BETWEEN THE PARTIES.**

19 **(G) “WORKERS’ RIGHTS LAWS” MEANS THE STATUTES AND REGULATIONS**
20 **DESIGNED TO SAFEGUARD THE RIGHTS OF WORKERS, INCLUDING:**

21 **(1) TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND**
22 **PROCUREMENT ARTICLE;**

23 **(2) THE MARYLAND WAGE AND HOUR LAW;**

24 **(3) TITLE 3, SUBTITLE 9 OF THE LABOR AND EMPLOYMENT ARTICLE;**

25 **(4) THE MARYLAND WAGE PAYMENT AND COLLECTION LAW; AND**

26 **(5) ANY OTHER LAW THAT THE ATTORNEY GENERAL IS EMPOWERED**
27 **TO USE TO PROTECT WORKERS’ RIGHTS.**

28 **6-1002.**

1 (A) THERE IS A WORKER PROTECTION UNIT IN THE OFFICE OF THE
2 ATTORNEY GENERAL.

3 (B) THE PURPOSE OF THE UNIT IS TO PROTECT THE RIGHTS OF WORKERS
4 WITHIN THE STATE, INCLUDING ENSURING COMPLIANCE WITH ANY WORKERS'
5 RIGHTS LAWS BY INVESTIGATING AND PROSECUTING VIOLATIONS OF THE WORKERS'
6 RIGHTS LAWS.

7 **6-1003.**

8 THIS SUBTITLE MAY NOT BE CONSTRUED TO TAKE AWAY OR LIMIT THE
9 POWERS OF THE ATTORNEY GENERAL.

10 **6-1004.**

11 THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION IN A COURT OF
12 COMPETENT JURISDICTION AGAINST AN EMPLOYER OR OTHER PERSON VIOLATING
13 A WORKERS' RIGHTS LAW FOR RESTITUTION OR FOR INJUNCTIVE, COMPENSATORY,
14 PUNITIVE, OR OTHER AUTHORIZED RELIEF FOR A WORKER, AN EMPLOYEE, OR THE
15 PUBLIC AT LARGE.

16 **6-1005.**

17 (A) THE UNIT SHALL INCLUDE:

18 (1) A FULL-TIME CHIEF COUNSEL; AND

19 (2) STAFF, INCLUDING ASSISTANT ATTORNEYS GENERAL,
20 INVESTIGATORS, ADMINISTRATORS, AND ANY OTHER PERSONNEL APPOINTED BY
21 AND AT THE DISCRETION OF THE ATTORNEY GENERAL.

22 (B) SALARIES OF THE CHIEF COUNSEL AND STAFF AND EXPENSES FOR
23 RENT, TRAVEL, EQUIPMENT, SUPPLIES, AND GENERAL OPERATING EXPENSES
24 NECESSARY FOR THE WORK OF THE UNIT SHALL BE AS PROVIDED IN THE STATE
25 BUDGET.

26 (C) THE ATTORNEY GENERAL SHALL SET MINIMUM SALARIES,
27 QUALIFICATIONS, AND STANDARDS OF TRAINING AND EXPERIENCE FOR POSITIONS
28 WITHIN THE UNIT.

29 **6-1006.**

1 THE ATTORNEY GENERAL MAY ADOPT REGULATIONS TO CARRY OUT THIS
2 SUBTITLE.

3 6-1007.

4 (A) ON THE ATTORNEY GENERAL'S OWN INITIATIVE OR IN RESPONSE TO A
5 COMPLAINT, THE ATTORNEY GENERAL MAY INVESTIGATE AS NECESSARY TO
6 DETERMINE COMPLIANCE WITH THE WORKERS' RIGHTS LAWS.

7 (B) (1) IN CONDUCTING AN INVESTIGATION UNDER SUBSECTION (A) OF
8 THIS SECTION, THE ATTORNEY GENERAL MAY:

9 (I) ENTER AND INSPECT A PERSON'S PLACE OF BUSINESS OR
10 PLACE OF WORK TO:

11 1. OBSERVE WORK BEING PERFORMED; AND

12 2. EXAMINE AND COPY:

13 A. RECORDS THAT A PERSON IS REQUIRED TO KEEP IN
14 ACCORDANCE WITH TITLE 3 OF THE LABOR AND EMPLOYMENT ARTICLE OR TITLE
15 17, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

16 B. BOOKS, REGISTERS, PAYROLL RECORDS, RECORDS OF
17 WAGE WITHHOLDINGS, RECORDS OF WORK ACTIVITY AND HOURS OF WORK, AND
18 RECORDS OR INDICIA OF THE EMPLOYMENT STATUS OF WORKERS PERFORMING
19 WORK FOR THE PERSON; OR

20 C. ANY OTHER RECORDS RELATING TO COMPLIANCE
21 WITH THE WORKERS' RIGHTS LAWS OR REGULATIONS ADOPTED UNDER THE
22 WORKERS' RIGHTS LAWS;

23 (II) REQUIRE A PERSON TO PRODUCE, WITHIN 15 CALENDAR
24 DAYS, A TRUE AND CORRECT COPY OF AN ITEM DESCRIBED IN ITEM (I)2 OF THIS
25 PARAGRAPH;

26 (III) DETERMINE THE IDENTITY AND ACTIVITIES OF ANY
27 WORKER RECEIVING REMUNERATION FROM A PERSON; AND

28 (IV) CONDUCT CONFIDENTIAL INTERVIEWS AND OBTAIN ORAL
29 OR WRITTEN STATEMENTS FROM A WORKER RELATING TO INFORMATION
30 CONCERNING THE REMUNERATION OF WORKERS AND THE NATURE AND EXTENT OF
31 THE SERVICES PERFORMED.

1 **(2) THE ATTORNEY GENERAL MAY CONDUCT THE ACTIVITIES**
2 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION AT:**

3 **(I) A LOCATION WHERE WORKERS ARE ENGAGED TO PERFORM**
4 **WORK FOR ANY PERSON; AND**

5 **(II) ANY OTHER LOCATION WHERE THE RECORDS DESCRIBED IN**
6 **PARAGRAPH (1)(I) OF THIS SUBSECTION ARE MAINTAINED BY A PERSON OR AN**
7 **AGENT OF THE PERSON.**

8 **(C) AT THE DISCRETION OF THE ATTORNEY GENERAL, THE UNIT MAY**
9 **REFER A MATTER TO A FEDERAL, STATE, OR LOCAL GOVERNMENT ENFORCEMENT**
10 **AGENCY OR UNIT.**

11 **6-1008.**

12 **(A) IF THE ATTORNEY GENERAL IS DENIED ACCESS TO A PLACE OF WORK**
13 **OR PLACE OF BUSINESS AFTER MAKING A PROPER REQUEST TO THE OWNER,**
14 **LESSEE, EMPLOYER, OR OTHER PERSON IN CHARGE OF ACCESS TO THE PLACE OF**
15 **BUSINESS OR PLACE OF WORK, THE ATTORNEY GENERAL MAY APPLY TO THE**
16 **DISTRICT COURT FOR AN ADMINISTRATIVE SEARCH WARRANT UNDER THIS**
17 **SECTION.**

18 **(B) EACH APPLICATION UNDER THIS SECTION SHALL:**

19 **(1) STATE THE NATURE, PURPOSE, AND SCOPE OF THE INSPECTION;**
20 **AND**

21 **(2) SHOW THAT:**

22 **(I) THE APPLICANT IS AUTHORIZED BY LAW TO INSPECT THE**
23 **PLACE OF BUSINESS OR PLACE OF WORK TO WHICH ACCESS WAS DENIED;**

24 **(II) REQUESTED ACCESS WAS AT A REASONABLE TIME;**

25 **(III) ACCESS WAS DENIED; AND**

26 **(IV) THE INSPECTION IS FOR A PURPOSE RELATED TO THIS**
27 **SUBTITLE.**

28 **(C) ON A SHOWING OF PROBABLE CAUSE, THE DISTRICT COURT SHALL**
29 **ISSUE THE ADMINISTRATIVE SEARCH WARRANT AUTHORIZING THE ATTORNEY**

1 GENERAL OR AUTHORIZED REPRESENTATIVE TO ENTER AND INSPECT THE PLACE
2 OF BUSINESS OR PLACE OF WORK, EXAMINE AND COPY RECORDS, AND TAKE OTHER
3 NECESSARY ACTIONS TO ENFORCE THIS SUBTITLE.

4 **6-1009.**

5 (A) TO CARRY OUT A DUTY OR EXERCISE A POWER UNDER THIS SUBTITLE,
6 THE ATTORNEY GENERAL OR AUTHORIZED REPRESENTATIVE OF THE ATTORNEY
7 GENERAL MAY ADMINISTER OATHS AND QUESTION WITNESSES ON RECORD AND
8 UNDER OATH.

9 (B) (1) TO ADMINISTER OR ENFORCE THIS TITLE, THE ATTORNEY
10 GENERAL OR AN AUTHORIZED REPRESENTATIVE MAY ISSUE A SUBPOENA FOR THE
11 ATTENDANCE OF A WITNESS TO TESTIFY OR THE PRODUCTION OF BOOKS,
12 DOCUMENTS, PAPERS, AND RECORDS.

13 (2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER
14 PARAGRAPH (1) OF THIS SUBSECTION OR FAILS TO TESTIFY ON A MATTER ON WHICH
15 THE PERSON LAWFULLY MAY BE INTERROGATED, ON A COMPLAINT FILED BY THE
16 ATTORNEY GENERAL, THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PERSON
17 RESIDES OR IS PRESENT MAY PASS AN ORDER DIRECTING COMPLIANCE WITH THE
18 SUBPOENA OR COMPELLING TESTIMONY.

19 (C) A PERSON MAY NOT BE EXCUSED FROM:

20 (1) ATTENDING AND TESTIFYING; OR

21 (2) PRODUCING A DOCUMENT OR RECORD BEFORE THE ATTORNEY
22 GENERAL OR IN A PROCEEDING INITIATED BY THE ATTORNEY GENERAL ON THE
23 GROUNDS THAT THE TESTIMONY OR EVIDENCE MAY INCRIMINATE THE PERSON OR
24 SUBJECT THE PERSON TO A PENALTY OR FORFEITURE.

25 (D) EXCEPT IN CASES OF PERJURY OR CONTEMPT, TESTIMONY OR
26 EVIDENCE OBTAINED UNDER SUBSECTION (B)(1) OF THIS SECTION MAY NOT BE
27 USED TO CRIMINALLY PROSECUTE THE INDIVIDUAL FOR THE SPECIFIC SUBJECT
28 THEY WERE COMPELLED TO TESTIFY OR PRODUCE EVIDENCE ABOUT.

29 **6-1010.**

30 (A) IN THIS SECTION, "RETALIATION" INCLUDES:

1 **(1) ADVERSE ACTIONS AFFECTING THE TERMS AND CONDITIONS OF**
2 **WORK OR EMPLOYMENT, SUCH AS TERMINATION, DEMOTION, REASSIGNMENT,**
3 **RELOCATION, CHANGE OF SCHEDULE, OR SUSPENSION;**

4 **(2) HARASSMENT OR INTIMIDATION IN THE WORKPLACE; AND**

5 **(3) AN ACTION THAT WOULD DISCOURAGE A WORKER FROM**
6 **PARTICIPATING IN AN INVESTIGATION OR A PROCEEDING UNDER THIS TITLE OR**
7 **OTHERWISE EXERCISE ANY RIGHT AFFORDED BY THIS TITLE.**

8 **(B) AN EMPLOYER OR ANOTHER PERSON MAY NOT DISCHARGE, DEMOTE,**
9 **HARASS, OR OTHERWISE RETALIATE AGAINST A WORKER WHO:**

10 **(1) REPORTS OR MAKES A COMPLAINT TO THE ATTORNEY GENERAL**
11 **OF A VIOLATION OF WORKERS' RIGHTS LAWS;**

12 **(2) PARTICIPATES IN AN INVESTIGATION OR PROCEEDING UNDER**
13 **THIS SUBTITLE; OR**

14 **(3) OTHERWISE EXERCISES ANY RIGHT AFFORDED BY THIS SUBTITLE.**

15 **(C) (1) A WORKER WHO BELIEVES THAT THE WORKER HAS BEEN**
16 **RETALIATED AGAINST IN VIOLATION OF SUBSECTION (B) OF THIS SECTION MAY FILE**
17 **A COMPLAINT WITH THE ATTORNEY GENERAL.**

18 **(2) THE ATTORNEY GENERAL MAY INVESTIGATE A COMPLAINT IN**
19 **ACCORDANCE WITH § 6-1007 OF THIS SUBTITLE.**

20 **(D) THE ATTORNEY GENERAL MAY FILE AN ACTION ON BEHALF OF ANY**
21 **WORKER FOUND BY THE ATTORNEY GENERAL TO HAVE BEEN RETALIATED AGAINST**
22 **IN VIOLATION OF THIS SUBTITLE IN ANY COURT OF COMPETENT JURISDICTION**
23 **WITHIN 3 YEARS FROM THE LAST INSTANCE OF RETALIATION.**

24 **(E) IF THE COURT FINDS IN FAVOR OF THE WORKER IN AN ACTION BROUGHT**
25 **UNDER SUBSECTION (D) OF THIS SECTION, THE COURT SHALL ORDER, AS**
26 **APPROPRIATE, THAT THE EMPLOYER OR OTHER PERSON:**

27 **(1) REINSTATE THE WORKER OR PROVIDE THE WORKER**
28 **RESTITUTION; AND**

29 **(2) PAY:**

30 **(I) ECONOMIC DAMAGES;**

1 **(II) AN AMOUNT TO THE WORKER THAT IS EQUAL TO THREE**
2 **TIMES THE AMOUNT OF ECONOMIC DAMAGES CALCULATED FROM THE DATE OF THE**
3 **VIOLATION;**

4 **(III) COMPENSATORY AND PUNITIVE DAMAGES; OR**

5 **(IV) REASONABLE COUNSEL FEES AND OTHER COSTS TO THE**
6 **ATTORNEY GENERAL.**

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2025.