

SB 838 / HB 1261

Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

FAVORABLE

Dear Chair Griffith and members of the Senate Finance Committee:

I hope this finds you well.

On behalf of UA Steamfitters Local 602, UA Plumbers & Gasfitters Local 5, and the Mechanical Contractors Association of Metropolitan Washington, please accept this testimony in support of SB838 / HB1261, legislation which addresses Wage Theft and wage-related tax and insurance frauds.

This bill primarily addresses a grotesque dissonance between the classifications of victims detailed in the Labor and Employment Article and the Tax-General Article of the Maryland statutes.

Under the Labor and Employment Article, if the victim of Misclassification is a *human being worker*, the maximum statutory penalties for the most egregious economic injury, one that was done willfully (intentionally denying proper wages, Unemployment Insurance, Workers Compensation Insurance, Overtime, paid leave under Maryland's Time to Care Act and Healthy Working Families Act, legal holidays, protections against illegal employment discrimination, and both retirement and health care benefits) are nominal civil fines of no more than \$5,000.

However, in that same scenario, but under the Tax-General Article, if the victim is the *State of Maryland* who is fraudulently denied the appropriate payroll withholdings – Income Tax, Unemployment Insurance, and Workers Compensation Insurance – the penalties are criminal misdemeanors up to \$10,000 and 5 years in prison, with additional criminal penalties of \$5,000 and 18 months in prison.

This divergence in penalties between Wage Theft and Payroll Fraud, and between human being victims and the State of Maryland, for the same willful act, makes little sense. Both acts are egregious, and both should be similarly charged and prosecuted, if the *mens rea* element of intent can be proven. Senate Bill 838 begins to align these penalties across the two statutes by elevating penalties for Wage Theft for Misclassification to a misdemeanor with comparatively nominal potential imprisonment, and fines up to \$5,000.

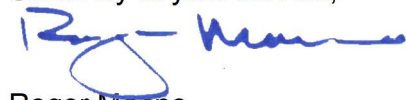
Prosecuting Wage Theft as a criminal act is common among states, with many states also prosecuting the underlying frauds as felonies. Doing so recognizes the pernicious nature of these willful acts, and also underscores the vulnerability of the worker victims, who tend to be women and people of color. For example, a 2017 study by David Cooper and Teresa Kroeger released by the Economic Policy Institute entitled “Employers steal billions from workers’ paychecks each year” revealed that women are more likely than men to be victims of wage violations by 55.1 percent to 46.6 percent, while workers of color are more likely to be victims wage violations than white workers, with Hispanic workers being the largest victim group, followed by Black workers.<sup>1</sup>

In addition to harmonizing the statutes among victims of the same willful act, SB838 / HB1261 also increases the efficiency of inter-agency cooperation and collaboration in investigations and prosecutions by cross referencing the statutes and requiring referrals of Wage Theft cases from the Department of Labor to the Comptroller. This is a key point of the bill, since Wage Theft is a civil offense within the Labor and Employment Article of the Maryland statutes, while Income Tax fraud and Payroll Tax fraud are existing criminal violations (misdemeanors) within the Tax-General Article of the Maryland Statute. This loophole in the statute effectively allows for Wage Theft cases to be dispensed with civilly at the Department of Labor, without necessarily ever getting to the underlying fraud charges, which are currently criminal acts under the Tax-General Article, but are not prosecuted unless referrals are made from Department of Labor to the Comptroller.

In closing, SB838 / HB1261 holistically addresses one of the most vicious and pervasive practices in the workforce sector, Wage Theft / Misclassification, and allows for a more efficient and methodical approach to prosecuting existing related criminal frauds against the State of Maryland and the taxpayers.

For these reasons, I respectfully ask for a favorable committee report.

Sincerely at your service,



Roger Manno

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<sup>1</sup> David Cooper and Teresa Kroeger, “Employers steal billions from workers’ paychecks each year,” *Economic Policy Institute*, May 10, 2017