

SENATE BILL 436

K3, P2, Q3
SB 838/23 – FIN

4lr1129
CF HB 465

By: **Senators Gile, Ferguson, Augustine, Beidle, Ellis, Feldman, Guzzone, Hettleman, Jackson, Kelly, King, Klausmeier, Kramer, Lam, McCray, Rosapepe, Salling, Smith, Sydnor, Waldstreicher, Zucker, and A. Washington**

Introduced and read first time: January 19, 2024

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2024

CHAPTER _____

1 AN ACT concerning

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

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

11 BY repealing and reenacting, with amendments,
12 Article – Labor and Employment
13 Section 3–909 and 3–910
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2023 Supplement)

16 BY adding to
17 Article – State Finance and Procurement
18 Section 17–227
19 Annotated Code of Maryland
20 (2021 Replacement Volume and 2023 Supplement)

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

3 **Article – Labor and Employment**

4 3–909.

5 (a) An employer found to have knowingly failed to properly classify an individual
6 in violation of § 3–904 of this subtitle:

7 ~~(1)~~ shall be assessed a civil penalty of up to ~~\$5,000~~ **\$10,000** for each
8 employee who was not properly classified; ~~AND~~

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

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

15 (1) the gravity of the violation;

16 (2) the size of the employer's business;

17 (3) the employer's good faith;

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

19 (5) whether the employer:

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

23 1. any provision of this article;

24 2. the State prevailing wage law, under §§ 17–221 and
25 17–222 of the State Finance and Procurement Article; or

26 3. the living wage law, under § 18–108 of the State Finance
27 and Procurement Article; and

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

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

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

6 (2) may award each individual an additional amount up to three times the
7 amount of such restitution.

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

12 (e) An employer who has been found by a final order of a court or an
13 administrative unit to have violated § 3-904 of this subtitle three or more times may be
14 assessed an administrative penalty of up to ~~\$20,000~~ **\$30,000** for each employee.

15 (f) (1) An employer may be assessed civil penalties under this section or §
16 8-201.1 or § 9-402.1 of this article by only one final order of a court or administrative unit
17 for the same actions constituting a violation of this subtitle.

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

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

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

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

30 3-910.

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

1 (B) ON A SHOWING ~~BY CLEAR AND CONVINCING EVIDENCE~~ THAT A
 2 VIOLATION OF § 3-904 OF THIS SUBTITLE HAS OCCURRED AND AS AUTHORIZED BY
 3 FEDERAL AND STATE LAW, THE COMMISSIONER SHALL REFER ANY COMPLAINT
 4 THAT ALLEGES A VIOLATION OF § 13-1007 OR § 13-1024 OF THE TAX - GENERAL
 5 ARTICLE TO THE:

6 (1) COMPTROLLER FOR AN INVESTIGATION BY THE FIELD
 7 ENFORCEMENT BUREAU; AND

8 (2) ~~STATE'S ATTORNEY WITH JURISDICTION OVER THE ALLEGED~~
 9 ~~VIOLATION;~~

10 (3) ~~U.S. DEPARTMENT OF JUSTICE;~~

11 (4) ~~U.S. DEPARTMENT OF LABOR; AND~~

12 (5) ~~U.S. DEPARTMENT OF THE TREASURY.~~

13 Article - State Finance and Procurement

14 17-227.

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

20 (B) ON A SHOWING ~~BY CLEAR AND CONVINCING EVIDENCE~~ THAT A
 21 VIOLATION OF THIS SUBTITLE HAS OCCURRED, THE COMMISSIONER SHALL REFER
 22 ANY COMPLAINT THAT ALLEGES A VIOLATION OF § 13-1007 OR § 13-1024 OF THE
 23 TAX - GENERAL ARTICLE TO THE:

24 (1) COMPTROLLER FOR AN INVESTIGATION BY THE FIELD
 25 ENFORCEMENT BUREAU; AND

26 (2) ~~STATE'S ATTORNEY WITH JURISDICTION OVER THE ALLEGED~~
 27 ~~VIOLATION;~~

28 (3) ~~U.S. DEPARTMENT OF JUSTICE;~~

29 (4) ~~U.S. DEPARTMENT OF LABOR; AND~~

30 (5) ~~U.S. DEPARTMENT OF THE TREASURY.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.