§ 861-e. Violations and penalties. 1. Any contractor who wilfully fails to properly classify an individual as an employee as provided under section eight hundred sixty-one-c of this article shall be subject to the civil and criminal penalties provided under this section. The civil penalties set forth in this section shall be imposed as follows: by the commissioner where such penalty is based on a violation of this chapter; by the chair of the workers' compensation board where such penalty is based on a violation of the workers' compensation law; and by the commissioner of tax and finance when such penalty is based on a violation of the tax law, provided that no more than one civil penalty under this section may be imposed per employee per incident of misclassification.

(a) The workers' compensation board shall provide a copy of any order relating to the misclassification of an employee, the intentional and material underpayment or concealment of payroll, or the failure to secure workers' compensation in the construction industry to the commissioner and commissioner of taxation and finance no later than seven days after the issuance of the order.

(b) Notwithstanding the secrecy provisions contained in articles nine-A and twenty-two of the tax law, the department of taxation and finance shall provide a copy of any assessment for failure to pay business, corporate or personal income tax by an employer in the construction industry arising out of the misclassification of an employee to the commissioner and chair of the workers' compensation board no later than seven days after the issuance of the assessment.

(c) Upon the issuance of an order or determination by the commissioner for a violation and penalties under this article, the commissioner shall provide a copy of the order to the chair of the workers' compensation board and the commissioner of taxation and finance no later than seven days after the issuance of the order.

2. For the purposes of this section, the term "willfully violates" means a contractor knew or should have known that his or her conduct was prohibited by this section.

3. Any contractor who willfully violates section eight hundred sixty-one-c of this article shall be subject to a civil penalty of up to

twenty-five hundred dollars for the first violation per misclassified employee and to a civil penalty of up to five thousand dollars for each subsequent violation per misclassified employee within a five year period.

4. In addition to civil penalties, the criminal penalties imposed on a contractor who willfully violates the provisions of this article shall be a misdemeanor and upon conviction shall be punished for a first offense by imprisonment for not more than thirty days or a fine not to exceed twenty-five thousand dollars and for a subsequent offense by imprisonment for not more than sixty days or a fine not to exceed fifty thousand dollars.

5. If the contractor is a corporation, any officer of such corporation or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation who knowingly permits the corporation to willfully violate the provisions of this article shall also be in violation of this article and the civil and criminal penalties herein shall attach to such officer upon conviction.

6. Any contractor subject to civil penalties under this article shall also be subject to any other applicable penalties or remedies provided by law for failure to pay any other statutory payment or coverage obligations, including but not limited to, unemployment insurance, workers' compensation insurance, or business, corporate or personal income tax, as follows:

(a) for failure to pay unemployment insurance tax, the penalties imposed by section five hundred seventy of this chapter.

(b) for intentional and material understatement or concealment of payroll or failure to secure workers' compensation insurance, the penalties imposed by paragraph (d) of subdivision one of section fifty-two of the workers' compensation law, and for failure to keep a true and accurate record pursuant to section one hundred thirty-one of the workers' compensation law, the penalties of section one hundred thirty-one of the workers' compensation law.

(c) for failure to pay business, corporate or personal income tax, the penalties imposed by section six hundred eighty-five and one thousand

eighty-five of the tax law.

7. Any contractor or any officer or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation that has been convicted of a misdemeanor shall be subject to debarment and be ineligible to submit a bid on or be awarded any public works contract with the state, any municipal corporation, public benefit corporation, public authority or public body for a period of up to one year from the date of such conviction or final determination, or up to five years in the event of any subsequent violation.

8. Any substantially owned affiliated entity of a contractor, as defined by paragraph g of subdivision five of section two hundred twenty of this chapter, shall be subject to the same civil penalty provided under this article for a violation of such provision.

9. Any penalties imposed under this section by the commissioner shall be appealed to the industrial board of appeals in accordance with article three of this chapter. Any penalties imposed under this section by the workers' compensation board or commissioner of taxation and finance shall be appealed in the same manner as the underlying violation.

10. Nothing in this section shall limit the availability of other remedies at law or in equity for a violation of this article.

11. Any fee or penalty assessed for a violation of this article shall be deposited into the department's fee and penalty account.