

CHAPTER 284

(House Bill 430)

AN ACT concerning

State Procurement Contracts – Living Wage

FOR the purpose of requiring certain contractors and subcontractors to pay certain employees ~~a~~ certain minimum wage ~~rate~~ rates under certain State procurement contracts; providing certain exemptions and reductions in ~~a~~ certain wage ~~rate~~ rates; requiring the Commissioner of Labor and Industry to alter ~~a~~ certain wage ~~rate~~ rates based on a certain Consumer Price Index and to administer and enforce requirements with regard to certain employers; authorizing the Commissioner to authorize, by regulation, certain reductions in certain wage rates; requiring the Commissioner to publish ~~a~~ certain wage ~~rate~~ rates under certain circumstances; requiring the Commissioner to make certain assessments every five years at certain intervals; requiring ~~certain units of State government~~ the Commissioner to adopt regulations and authorizing certain units to grant certain waivers; requiring certain individuals in certain units of State government to make certain determinations; ~~granting certain employees rights of free speech and association~~ requiring the Commissioner to conduct a certain study; requiring certain employers to post certain information; requiring the Commissioner to develop a certain notice and to make the notice available in certain manners; authorizing an employee to sue for certain wages under certain circumstances; providing certain remedies and certain procedural requirements; ~~prohibiting an employer from retaliating against an employee based on a certain action~~; establishing certain penalties; defining certain terms; requiring the Department of Legislative Services to study certain matters and report to the General Assembly on or before a certain date; requiring certain governmental units to cooperate with the Department and provide certain information in a certain manner; providing for the application of this Act; and generally relating to the living wage.

BY repealing and reenacting, without amendments,
 Article – State Finance and Procurement
 Section 11-101(x)
 Annotated Code of Maryland
 (2006 Replacement Volume and 2006 Supplement)

BY adding to

Article – State Finance and Procurement

Section ~~12-101(e)~~, and 18-101 through ~~18-110~~ 18-109, inclusive, to be under the new title “Title 18. Living Wage”

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)

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

Article – State Finance and Procurement

11-101.

(x) (1) “Unit” means an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.

(2) “Unit” does not include:

(i) a bistate, multistate, bicounty, or multicounty governmental agency; or

(ii) a special tax district, sanitary district, drainage district, soil conservation district, water supply district, or other political subdivision of the State.

~~12-101.~~

~~(C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE PROVISIONS OF TITLE 18 OF THIS ARTICLE.~~

TITLE 18. LIVING WAGE.

18-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) **“COMMISSIONER” MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.**

(C) **(1) “EMPLOYER” MEANS A CONTRACTOR OR SUBCONTRACTOR THAT HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR MORE.**

(2) “EMPLOYER” DOES NOT INCLUDE A CONTRACTOR OR SUBCONTRACTOR THAT:

(I) EMPLOYS 10 OR FEWER EMPLOYEES; AND

(II) HAS A STATE CONTRACT FOR SERVICES VALUED AT LESS THAN \$500,000.

(D) **“LIVING WAGE” MEANS AN HOURLY WAGE SET AS PROVIDED UNDER § 18-103 OF THIS TITLE.**

(E) “TIER 1 AREA” INCLUDES MONTGOMERY COUNTY, PRINCE GEORGE’S COUNTY, HOWARD COUNTY, ANNE ARUNDEL COUNTY, BALTIMORE COUNTY, AND BALTIMORE CITY.

(F) “TIER 2 AREA” INCLUDES ANY COUNTY IN THE STATE NOT INCLUDED IN THE TIER 1 AREA.

18-102.

(A) (1) **THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT LEAST ONE-HALF OF THE EMPLOYEE’S TIME DURING ANY WORK WEEK RELATES TO A STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE CONTRACT.**

(2) **THIS TITLE DOES NOT APPLY TO AN EMPLOYEE OF AN EMPLOYER IF THE EMPLOYEE:**

(I) IS 17 YEARS OF AGE OR YOUNGER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE; OR

(II) WORKS LESS THAN 13 CONSECUTIVE WEEKS FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE AND DURING THAT PERIOD WORKS FULL TIME.

(B) THIS TITLE DOES NOT APPLY TO A CONTRACT:

(1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR RESPOND TO AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

(2) WITH A PUBLIC SERVICE COMPANY;

(3) WITH A NONPROFIT ORGANIZATION;

(4) BETWEEN UNITS; OR

(5) BETWEEN A UNIT AND A COUNTY OR BALTIMORE CITY.

(C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES THAT APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE FEDERAL PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE CONTRACT OR PROGRAM.

(D) THE HEAD OF THE UNIT RESPONSIBLE FOR A STATE CONTRACT SUBJECT TO THIS TITLE SHALL DETERMINE IF CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT WILL BE PERFORMED IN THE TIER 1 AREA OR THE TIER 2 AREA AND SHALL PROVIDE THAT DETERMINATION ON THE INVITATION FOR A BID.

18-103.

(A) EXCEPT AS PROVIDED IN SUBSECTION ~~(D)~~ (C) OF THIS SECTION, AN EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER THIS TITLE ~~AT LEAST \$11.95 PER HOUR;~~

(1) AT LEAST \$11.30 PER HOUR, IF STATE CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE PERFORMED IN THE TIER 1 AREA; OR

(2) AT LEAST \$8.50 PER HOUR, IF STATE CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE PERFORMED IN THE TIER 2 AREA.

(B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL YEAR, THE COMMISSIONER SHALL ADJUST THE WAGE ~~RATE~~ RATES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION BY THE ANNUAL AVERAGE INCREASE OR DECREASE, IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS CALENDAR YEAR.

(2) IF THE COMMISSIONER ADJUSTS THE WAGE ~~RATE~~ RATES IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL PUBLISH THE NEW WAGE ~~RATE~~ RATES ON THE DIVISION OF LABOR AND INDUSTRY'S WEBSITE.

(3) ON REQUEST BY ANY PERSON, THE COMMISSIONER SHALL GIVE THE PERSON A PRINTED COPY OF THE NEW WAGE ~~RATE~~ RATES.

~~(C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER THIS TITLE OR TITLE 17, SUBTITLE 2 OF THIS ARTICLE.~~

~~(D)~~ (C) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE HEALTH INSURANCE TO AN EMPLOYEE, EITHER DIRECTLY OR THROUGH AN EMPLOYEE REPRESENTATIVE, THE EMPLOYER MAY:

(1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH EMPLOYEE; AND

(2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS SECTION TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH EMPLOYEE.

(D) THE COMMISSIONER MAY AUTHORIZE, BY REGULATION, AN EMPLOYER TO REDUCE THE WAGE RATES PAID UNDER SUBSECTION (A) OF THIS SECTION BY NO MORE THAN 50 CENTS OF THE HOURLY COST OF THE

EMPLOYER'S CONTRIBUTION TO AN EMPLOYEE'S DEFERRED COMPENSATION PLAN.

18-104.

(A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING EMPLOYERS SUBJECT TO THIS TITLE.

(B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.

(C) THE COMMISSIONER EVERY 5 3 YEARS SHALL ASSESS THE APPROPRIATENESS OF:

(1) THE MEASURES USED TO ADJUST THE WAGE RATES UNDER § 18-103(B) OF THIS SUBTITLE TO ENSURE THAT THE MEASURES ACCURATELY REFLECT THE WAGE RATES OF EMPLOYEES IN THE TIER 1 AREA AND TIER 2 AREA OF THE STATE; AND

(2) THE PLACEMENT OF COUNTIES IN THE TIER 1 AREA AND TIER 2 AREA.

18-105.

~~(A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE SPEECH AND ASSOCIATION.~~

~~(B) AN AGREEMENT BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS TITLE IS VOID.~~

18-106.

(A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE A NOTICE OF:

- (1) THE LIVING WAGE RATE;
- (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND
- (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE COMMISSIONER.

(B) ~~THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE:~~

(1) DEVELOPED BY THE COMMISSIONER IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT A WORK SITE; AND

(2) (I) ON REQUEST OF AN EMPLOYER, PROVIDED WITHOUT CHARGE TO THE EMPLOYER; OR

(II) MADE AVAILABLE FOR DOWNLOAD ON THE INTERNET WITHOUT CHARGE.

(C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL PENALTY NOT EXCEEDING \$50 PER VIOLATION.

18-107.

(A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE COMMISSIONER SHALL INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH THIS TITLE.

(B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

(C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR PURPOSES OF ENFORCING THIS TITLE.

(D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

(2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL INTERESTED PARTIES.

(3) THE NOTICE SHALL INCLUDE:

(I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION; AND

(II) THE TIME AND PLACE OF THE HEARING.

(4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

(I) SUBPOENA WITNESSES;

(II) ADMINISTER OATHS; AND

(III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND OTHER EVIDENCE.

(E) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER SHALL:

(I) ISSUE A DETERMINATION; AND

(II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY WITH A COPY OF THE DETERMINATION.

(2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.

(3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE COMMISSIONER'S DETERMINATION.

18-108.

IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE EMPLOYER SHALL:

(1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

(2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH EMPLOYEE WHO WAS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS TITLE.

18-109.

(A) (1) IF AN EMPLOYEE WAS PAID LESS THAN THE WAGE RATE REQUIRED UNDER THIS TITLE THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

(2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM FILING AN ACTION UNDER THIS SECTION.

(B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR WAGES.

(2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

(C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

~~18-110.~~

~~(A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.~~

~~(B) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Department of Legislative Services shall conduct a study of the fiscal and economic impacts of this Act on the public and private sectors.

(b) (1) In conducting this study, the Department shall consult with and obtain all necessary and appropriate information from the Department of Labor, Licensing, and Regulation, the Office of the Attorney General, local governments, and other appropriate units and persons.

(2) Each unit of the Executive Branch of State government and each unit of local government shall fully cooperate with the Department of Legislative Services and its employees and agents in the activities necessary or helpful in fulfilling the requirements of this section.

(3) Notwithstanding Title 10, Subtitle 6 of the State Government Article or any other law, each governmental unit that is requested to provide information to the Department of Legislative Services in furtherance of this section shall provide the information promptly and without the necessity of further authorization.

(c) On or before January 1, 2009, the Department of Legislative Services shall report the findings of the study to the General Assembly, subject to § 2-1246 of the State Government Article.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Commissioner of Labor and Industry shall study the impact on the standard of living of employees that results from allowing an employer to reduce the living wage rates paid under Section 1 of this Act by all or part of the hourly cost of the employer's contribution to a deferred retirement plan of the employer's employees.

(b) The study required under subsection (a) of this section shall include a review of living wage requirements in other jurisdictions in Maryland and nationally.

(c) The Commissioner of Labor and Industry shall report the findings and recommendations resulting from the study required under subsection (a) of this section.

in accordance with § 2-1246 of the State Government Article, to the Governor and the General Assembly by December 1, 2007.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract awarded before the effective date of this Act.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, May 8, 2007.