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Introduced and read first time: February 11, 1999
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement and Financing - Investment and Accountability Act**

3 FOR the purpose of requiring certain contractors and subcontractors to pay certain
4 employees a certain minimum salary level under certain State procurement
5 contracts; requiring certain recipients of State financial assistance and certain
6 health care providers receiving certain revenue levels through the State's
7 medical assistance program to pay certain employees a certain minimum salary
8 level; providing certain exemptions; requiring an alternative minimum salary
9 level for work previously performed by State employees; requiring the
10 Commissioner of Labor and Industry to prescribe a living wage level based on a
11 certain federal rate, to administer and enforce certain requirements, and to
12 investigate certain complaints; requiring certain units of State government to
13 adopt regulations and authorizing certain units to grant certain waivers;
14 requiring certain employers to post certain information; authorizing an
15 employee to sue for certain damages when an employer fails to pay required
16 wage levels; providing certain remedies and certain procedural requirements;
17 defining certain terms; and generally relating to certain wage levels under
18 certain service contracts and financial assistance programs supported with
19 State revenues.

20 BY repealing and reenacting, with amendments,
21 Article - State Finance and Procurement
22 Section 11-101(x)
23 Annotated Code of Maryland
24 (1995 Replacement Volume and 1998 Supplement)

25 BY adding to
26 Article - State Finance and Procurement

1 Section 12-101(c); and 19-101 through 19-109, inclusive, to be under the new
2 title "Title 19. Living Wage"
3 Annotated Code of Maryland
4 (1995 Replacement Volume and 1998 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - Health - General
7 Section 15-105
8 Annotated Code of Maryland
9 (1994 Replacement Volume and 1998 Supplement)

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

12 **Article - State Finance and Procurement**

13 11-101.

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

17 (2) FOR PURPOSES OF TITLE 19 OF THIS ARTICLE, "UNIT" INCLUDES AN
18 ENTITY IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT THAT ADMINISTERS A
19 FINANCIAL ASSISTANCE PROGRAM REQUIRING THE PAYMENT OF LIVING WAGE
20 RATES.

21 (3) "Unit" does not include:

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

24 (ii) a special tax district, sanitary district, drainage district, soil
25 conservation district, water supply district, or other political subdivision of the State.
26 12-101.

27 (C) IN CONSULTATION WITH THE COMMISSIONER OF LABOR AND INDUSTRY,
28 THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION OF TITLE 19
29 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE
30 PROVISIONS OF THAT TITLE.

31 TITLE 19. LIVING WAGE.

32 19-101.

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

34 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

1 (C) "EMPLOYER" MEANS A FOR-PROFIT OR NOT-FOR-PROFIT ENTITY THAT:

2 (1) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
3 MORE;

4 (2) HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR MORE
5 UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION;

6 (3) IS A HEALTH CARE PROVIDER THAT RECEIVES 50% OR MORE OF ITS
7 ANNUAL GROSS REVENUES THROUGH THE STATE'S MEDICAL ASSISTANCE PROGRAM;
8 OR

9 (4) SUBJECT TO § 19-102(B)(3) OF THIS TITLE, IS A RECIPIENT OF STATE
10 FINANCIAL ASSISTANCE.

11 (D) "INDEX" MEANS THE MOST RECENT AVAILABLE FIGURE STATED IN THE
12 PUBLICATION "POVERTY IN THE UNITED STATES", PUBLISHED BY THE UNITED
13 STATES BUREAU OF THE CENSUS AND UPDATED ON AN ANNUAL BASIS, WHICH
14 DEFINES THE NATIONAL POVERTY LEVEL FOR A FAMILY OF FOUR.

15 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, "LIVING WAGE"
16 MEANS AN HOURLY WAGE RATE SET BY THE COMMISSIONER THAT, BASED ON A
17 40-HOUR WORKWEEK, WOULD PROVIDE AN EMPLOYEE WITH AN ANNUAL INCOME
18 THAT IS AT LEAST 130% OF THE INDEX.

19 (2) IF THE PUBLISHED NATIONAL POVERTY LEVEL FOR A FAMILY OF
20 FOUR IS REDUCED, THE LIVING WAGE SET BY THE COMMISSIONER MAY NOT BE LESS
21 THAN THE HOURLY WAGE IN EFFECT DURING THE PREVIOUS YEAR.

22 (F) "RECIPIENT OF STATE ASSISTANCE" MEANS A FOR-PROFIT OR
23 NOT-FOR-PROFIT EMPLOYER THAT RECEIVES STATE ASSISTANCE THROUGH A BOND
24 PROCEED, GRANT, LOAN, RENT SUBSIDIARY, OR TAX INCENTIVE.

25 19-102.

26 (A) THIS TITLE DOES NOT APPLY TO AN EMPLOYER THAT IS A
27 NOT-FOR-PROFIT ENTITY:

28 (1) WITH ANNUAL GROSS REVENUES UNDER \$500,000;

29 (2) THAT EMPLOYS FEWER THAN 30 EMPLOYEES; OR

30 (3) THAT RECEIVES AN ECONOMIC HARDSHIP WAIVER UNDER § 19-105
31 OF THIS TITLE.

32 (B) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER:

33 (1) FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT
34 LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A
35 STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE
36 CONTRACT;

1 (2) THAT IS A HEALTH CARE PROVIDER SUBJECT TO THIS TITLE; OR

2 (3) THAT IS A RECIPIENT OF STATE FINANCIAL ASSISTANCE:

3 (I) FOR THE DURATION OF A PARTICULAR PROJECT FUNDED IN
4 FULL OR IN PART BY THE STATE IF THE STATE FUNDING IS TIED SPECIFICALLY TO
5 THAT PROJECT AND AT LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY
6 WORKWEEK RELATES TO THE PROJECT;

7 (II) FOR THE TERM OF FINANCIAL ASSISTANCE IF AT LEAST
8 ONE-HALF OF THE EMPLOYEE'S TIME IS SPENT ON PROPERTY CONTROLLED BY THE
9 EMPLOYER AND THE EMPLOYER RECEIVED ANY FORM OF FINANCIAL ASSISTANCE
10 FROM THE STATE THAT EXTENDS OVER TIME IN CONNECTION WITH THE PROPERTY;
11 OR

12 (III) FOR THE TERM ESTABLISHED AS A CONDITION OF OTHER
13 STATE FINANCIAL ASSISTANCE PROGRAMS BY THE UNIT THAT ADMINISTERS THE
14 PROGRAM UNDER WHICH THE ASSISTANCE IS MADE AVAILABLE.

15 19-103.

16 (A) SUBJECT TO SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, AN
17 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
18 THIS SUBTITLE AT AN HOURLY RATE THAT IS AT LEAST THE LIVING WAGE AS SET BY
19 THE COMMISSIONER.

20 (B) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
21 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
22 EMPLOYEE THE WAGE RATE REQUIRED UNDER TITLE 17, SUBTITLE 2 OF THIS
23 ARTICLE OR THIS TITLE, WHICHEVER IS HIGHER.

24 (C) IF A CONTRACT FOR SERVICES COVERS WORK PREVIOUSLY PERFORMED
25 BY STATE EMPLOYEES, AN EMPLOYER SHALL PAY AN EMPLOYEE A WAGE RATE THAT
26 IS NOT LESS THAN THE STEP 1 RATE WITHIN THE LOWEST GRADE AT WHICH THE
27 POSITION WOULD BE CLASSIFIED IF THE WORK CONTINUED TO BE PERFORMED BY
28 STATE EMPLOYEES PLUS EITHER COMPARABLE BENEFITS OR THE CASH
29 EQUIVALENT OF COMPARABLE BENEFITS OR THE WAGE RATE UNDER THIS TITLE,
30 WHICHEVER IS HIGHER.

31 (D) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT OR FINANCIAL
32 ASSISTANCE PROGRAM DETERMINES THAT APPLICATION OF THIS TITLE WOULD
33 CONFLICT WITH ANY APPLICABLE FEDERAL PROGRAM REQUIREMENT, THIS TITLE
34 DOES NOT APPLY TO THE CONTRACT OR PROGRAM.

35 19-104.

36 (A) THE COMMISSIONER ANNUALLY SHALL DETERMINE THE LIVING WAGE
37 RATE APPLICABLE UNDER THIS TITLE.

1 (B) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
2 EMPLOYERS SUBJECT TO THIS TITLE AND MAY REQUIRE THAT AN EMPLOYER KEEP
3 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
4 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
5 ENFORCEMENT OF THIS TITLE.

6 (C) IN CONSULTATION WITH THE COMMISSIONER, EACH UNIT THAT
7 ADMINISTERS A STATE FINANCIAL ASSISTANCE PROGRAM SHALL ADOPT
8 REGULATIONS GOVERNING THE APPLICATION OF THIS TITLE TO RECIPIENTS OF
9 STATE ASSISTANCE SUBJECT TO THE PROVISIONS OF THIS TITLE.

10 19-105.

11 (A) NOTWITHSTANDING § 19-103 OF THIS TITLE, A NOT-FOR-PROFIT ENTITY
12 THAT IS SUBJECT TO THIS TITLE MAY APPLY TO THE UNIT RESPONSIBLE FOR THE
13 APPLICABLE CONTRACT OR PROGRAM REQUESTING AN ECONOMIC HARDSHIP
14 WAIVER UNDER WHICH WAGE LEVELS REQUIRED UNDER THIS TITLE WOULD NOT
15 APPLY.

16 (B) THE UNIT MAY ONLY GRANT A WAIVER UNDER THIS SECTION AFTER A
17 REVIEW OF THE NOT-FOR-PROFIT ENTITY'S FINANCIAL SITUATION, INCLUDING
18 SALARY LEVELS OF THE ENTITY'S MANAGEMENT PERSONNEL, AND A
19 DETERMINATION THAT APPLICATION OF THIS TITLE WOULD CAUSE AN UNDUE
20 HARDSHIP ON THE ENTITY'S OPERATION.

21 19-106.

22 (A) EACH EMPLOYER SUBJECT TO THIS TITLE SHALL POST IN A PROMINENT
23 AND EASILY ACCESSIBLE PLACE AT THE WORK SITE DURING ANY PERIOD IN WHICH
24 AN EMPLOYEE OF THE EMPLOYER IS ENTITLED TO A WAGE RATE UNDER THIS TITLE
25 A NOTICE OF:

26 (1) THE LIVING WAGE RATE;

27 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

28 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
29 COMMISSIONER.

30 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
31 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
32 WORK SITE.

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

1 19-107.

2 (A) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER THIS
3 TITLE.

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

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

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

13 (2) AT LEAST 10 DAYS BEFORE THE HEARING, THE COMMISSIONER
14 SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
15 INTERESTED PARTIES.

16 (3) THE NOTICE SHALL INCLUDE:

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

19 (II) THE TIME AND PLACE OF THE HEARING.

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

21 (I) SUBPOENA WITNESSES;

22 (II) ADMINISTER OATHS; AND

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

25 (E) (1) AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER
26 SHALL:

27 (I) ISSUE A DETERMINATION; AND

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

30 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
31 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
32 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 19-108 OF THIS TITLE.

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

4 19-108.

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

8 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

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

12 19-109.

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

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

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

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

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

27 (D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,
28 THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES
29 UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,
30 INCLUDING REASONABLE ATTORNEY FEES.

31 **Article - Health - General**

32 15-105.

33 (a) (1) The Department shall adopt rules and regulations for the
34 reimbursement of providers under the Program. However, except for an invoice that
35 must be submitted to a Medicare intermediary or Medicare carrier for an individual

1 who may have both Medicare and Medicaid coverage, payment may not be made for
2 an invoice that is received more than 1 year after the dates of the services given.

3 (2) IN CONSULTATION WITH THE COMMISSIONER OF LABOR AND
4 INDUSTRY, THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE
5 APPLICATION OF TITLE 19 OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO
6 HEALTH CARE PROVIDERS SUBJECT TO THE PROVISIONS OF THAT TITLE.

7 (b) A provider who fails to submit an invoice within the required time may not
8 recover the amount later from the Program recipient.

9 (c) (1) The Department shall adopt regulations for the reimbursement of
10 specialty outpatient treatment and diagnostic services rendered to Program
11 recipients at a freestanding clinic owned and operated by a hospital that is under a
12 capitation agreement approved by the Health Services Cost Review Commission.

13 (2) The reimbursement rate under paragraph (1) of this subsection shall
14 be set according to Medicare standards and principles for retrospective cost
15 reimbursement as described in 42 CFR Part 413 or on the basis of charges, whichever
16 is less.

17 (d) This section has no effect if its operation would cause this State to lose any
18 federal funds.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1999.