

SENATE BILL 581

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P2

1999 Regular Session
9r0814
CF 9r1449

By: **Senators Pinsky, McFadden, Kelley, Sfikas, Conway, Blount, Hughes,
Exum, Mitchell, and Ruben**

Introduced and read first time: February 5, 1999

Assigned to: Finance

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 granting certain employees rights of free speech and association; providing that
15 certain agreements relating to certain employee rights are void; providing that
16 certain wage rates may be modified through a collective bargaining agreement;
17 requiring certain employers to post certain information; authorizing an
18 employee to sue for certain damages when an employer fails to pay required
19 wage levels or when an employer retaliates against an employee for exercising
20 certain rights; providing certain remedies and certain procedural requirements;
21 prohibiting an employer from retaliating against an employee based on certain
22 action; establishing certain penalties; defining certain terms; and generally
23 relating to certain wage levels under certain service contracts and financial
24 assistance programs supported with State revenues.

25 BY repealing and reenacting, with amendments,
26 Article - State Finance and Procurement
27 Section 11-101(x)
28 Annotated Code of Maryland
29 (1995 Replacement Volume and 1998 Supplement)

30 BY adding to
31 Article - State Finance and Procurement

1 Section 12-101(c); and 19-101 through 19-111, 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, TAX INCENTIVE, OR OTHER STATE
25 FINANCIAL ASSISTANCE PROGRAM.

26 19-102.

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

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

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

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

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

34 (1) FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT
35 LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A

1 STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE
2 CONTRACT;

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

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

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

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

14 (III) FOR THE TERM ESTABLISHED AS A CONDITION OF OTHER
15 STATE FINANCIAL ASSISTANCE PROGRAMS BY THE UNIT THAT ADMINISTERS THE
16 PROGRAM UNDER WHICH THE ASSISTANCE IS MADE AVAILABLE PROVIDED THAT
17 THE TERM IS NOT LESS THAN ANY TERM THAT WOULD OTHERWISE APPLY UNDER
18 PROVISIONS OF THIS SUBSECTION.

19 19-103.

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

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

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

35 (D) IF THE APPLICATION OF THIS TITLE TO ANY STATE CONTRACT OR
36 FINANCIAL ASSISTANCE PROGRAM WOULD RESULT IN A LOSS TO THE STATE OF
37 FEDERAL FUNDS, THE UNIT RESPONSIBLE FOR THE CONTRACT OR PROGRAM MAY
38 WAIVE THE APPLICATION OF THIS TITLE TO THE EXTENT NECESSARY TO PROTECT
39 FEDERAL FUNDING.

1 19-104.

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

4 (B) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
5 EMPLOYERS SUBJECT TO THIS TITLE AND SHALL REQUIRE THAT AN EMPLOYER:

6 (1) KEEP RECORDS, INCLUDING RECORDS OF EMPLOYEES SUBJECT TO
7 THIS TITLE AND WAGES PAID TO THE EMPLOYEES; AND

8 (2) SUBMIT REPORTS TO THE COMMISSIONER THAT THE
9 COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION
10 AND ENFORCEMENT OF THIS TITLE.

11 (C) IN CONSULTATION WITH THE COMMISSIONER, EACH UNIT THAT
12 ADMINISTERS A STATE FINANCIAL ASSISTANCE PROGRAM SHALL ADOPT
13 REGULATIONS GOVERNING THE APPLICATION OF THIS TITLE TO RECIPIENTS OF
14 STATE ASSISTANCE SUBJECT TO THE PROVISIONS OF THIS TITLE.

15 19-105.

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

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

26 19-106.

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

29 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT
30 BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS
31 UNDER THIS TITLE IS VOID.

32 (2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED
33 THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

34 19-107.

35 (A) EACH EMPLOYER SUBJECT TO THIS TITLE SHALL POST IN A PROMINENT
36 AND EASILY ACCESSIBLE PLACE AT THE WORK SITE DURING ANY PERIOD IN WHICH

1 AN EMPLOYEE OF THE EMPLOYER IS ENTITLED TO A WAGE RATE UNDER THIS TITLE
2 A NOTICE OF:

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

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

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

13 19-108.

14 (A) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER THIS
15 TITLE.

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

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

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

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

28 (3) THE NOTICE SHALL INCLUDE:

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

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

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

33 (I) SUBPOENA WITNESSES;

34 (II) ADMINISTER OATHS; AND

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

3 (E) (1) AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER
4 SHALL:

5 (I) ISSUE A DETERMINATION; AND

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

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

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

14 19-109.

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

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

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

22 19-110.

23 (A) (1) IF AN EMPLOYEE IS PAID LESS THAN THE WAGE RATE REQUIRED
24 UNDER THIS TITLE OR IF AN EMPLOYER RETALIATES AGAINST THE EMPLOYEE
25 SOLELY BECAUSE THE EMPLOYEE EXERCISED RIGHTS GRANTED UNDER THIS TITLE,
26 THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER:

27 (I) FOR LOST WAGES, TREBLE THE AMOUNT OF THE DIFFERENCE
28 BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND THE AMOUNT
29 RECEIVED BY THE EMPLOYEE; AND

30 (II) FOR RETALIATION, COMPENSATORY AND PUNITIVE DAMAGES.

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

34 (B) AN ACTION UNDER SUBSECTION (A)(1)(I) OF THIS SECTION IS CONSIDERED
35 TO BE A SUIT FOR WAGES AND A JUDGMENT SHALL HAVE THE SAME FORCE AND
36 EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

1 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING
2 ABOUT THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED
3 UNDER THIS TITLE OR RETALIATORY ACTIONS BY AN EMPLOYER IS NOT A BAR TO
4 RECOVERY IN AN ACTION UNDER THIS SECTION.

5 (D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,
6 THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES OR
7 DAMAGES UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,
8 INCLUDING REASONABLE ATTORNEY FEES AND WITNESS FEES.

9 19-111.

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

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

15 **Article - Health - General**

16 15-105.

17 (a) (1) The Department shall adopt rules and regulations for the
18 reimbursement of providers under the Program. However, except for an invoice that
19 must be submitted to a Medicare intermediary or Medicare carrier for an individual
20 who may have both Medicare and Medicaid coverage, payment may not be made for
21 an invoice that is received more than 1 year after the dates of the services given.

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

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

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

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

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

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