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Introduced and read first time: February 11, 2000
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; requiring the State to pay State employees the same minimum salary
9 level; providing certain exemptions; requiring an alternative minimum salary
10 level for work previously performed by State employees; requiring the
11 Commissioner of Labor and Industry to prescribe a living wage level based on a
12 certain federal rate, to administer and enforce requirements with regard to
13 employees other than State employees, and to investigate complaints involving
14 employees other than State employees; requiring the Secretary of Budget and
15 Management to administer and enforce requirements and investigate
16 complaints involving State employees; requiring certain units of State
17 government to adopt regulations and authorizing certain units to grant certain
18 waivers; requiring covered employers to post certain information; authorizing
19 an employee other than a State employee to sue for certain damages when an
20 employer fails to pay required wage levels; providing certain remedies and
21 certain procedural requirements; defining certain terms; and generally relating
22 to levels of wages paid to State employees and to employees under certain
23 service contracts and financial assistance programs supported with State
24 revenues.

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

1 (1995 Replacement Volume and 1999 Supplement)

2 BY adding to

3 Article - State Finance and Procurement

4 Section 12-101(c); and 19-101 through 19-109, inclusive, to be under the new

5 title "Title 19. Living Wage"

6 Annotated Code of Maryland

7 (1995 Replacement Volume and 1999 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article - Health - General

10 Section 15-105

11 Annotated Code of Maryland

12 (1994 Replacement Volume and 1999 Supplement)

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

15 **Article - State Finance and Procurement**

16 11-101.

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

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

24 (3) "Unit" does not include:

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

27 (ii) a special tax district, sanitary district, drainage district, soil
28 conservation district, water supply district, or other political subdivision of the State.
29 12-101.

30 (C) THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
31 OF TITLE 19 OF THIS ARTICLE TO:

32 (1) CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE
33 PROVISIONS OF TITLE 19 OF THIS ARTICLE, AFTER CONSULTATION WITH THE
34 COMMISSIONER OF LABOR AND INDUSTRY; AND

1 (2) STATE EMPLOYEES, AFTER CONSULTATION WITH THE SECRETARY
2 OF BUDGET AND MANAGEMENT.

3 TITLE 19. LIVING WAGE.

4 19-101.

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

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

7 (C) "EMPLOYER" MEANS:

8 (1) THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT; OR

9 (2) A FOR-PROFIT OR NOT-FOR-PROFIT ENTITY THAT:

10 (I) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
11 MORE;

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

14 (III) IS A HEALTH CARE PROVIDER THAT RECEIVES 50% OR MORE OF
15 ITS ANNUAL GROSS REVENUES THROUGH THE STATE'S MEDICAL ASSISTANCE
16 PROGRAM; OR

17 (IV) SUBJECT TO § 19-102(B)(3) OF THIS TITLE, IS A RECIPIENT OF
18 STATE FINANCIAL ASSISTANCE.

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

23 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, "LIVING WAGE"
24 MEANS AN HOURLY WAGE RATE SET BY THE COMMISSIONER THAT, BASED ON A
25 40-HOUR WORKWEEK, WOULD PROVIDE AN EMPLOYEE WITH AN ANNUAL INCOME
26 THAT IS AT LEAST 130% OF THE INDEX.

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

30 (F) "RECIPIENT OF STATE ASSISTANCE" MEANS A FOR-PROFIT OR
31 NOT-FOR-PROFIT EMPLOYER THAT RECEIVES STATE ASSISTANCE THROUGH BOND
32 PROCEEDS, GRANT, LOAN, RENT SUBSIDY, OR TAX INCENTIVE.

1 19-102.

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

4 (1) THAT HAS ANNUAL GROSS REVENUES OF LESS THAN:

5 (I) ON OR BEFORE SEPTEMBER 30, 2001, \$100 MILLION;

6 (II) ON OR AFTER OCTOBER 1, 2001 AND ON OR BEFORE SEPTEMBER
7 30, 2002, \$10 MILLION; AND

8 (III) ON OR AFTER OCTOBER 1, 2002, \$1 MILLION;

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

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

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

13 (1) WHO IS THE STATE OR A PRINCIPAL UNIT OF THE STATE;

14 (2) FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT
15 LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A
16 STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE
17 CONTRACT;

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

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

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

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

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

32 19-103.

33 (A) SUBJECT TO SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, AN
34 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER

1 THIS SUBTITLE AT AN HOURLY RATE THAT IS AT LEAST THE LIVING WAGE AS SET BY
2 THE COMMISSIONER.

3 (B) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
4 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
5 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER TITLE
6 17, SUBTITLE 2 OF THIS ARTICLE OR THIS TITLE.

7 (C) IF A CONTRACT FOR SERVICES COVERS WORK PREVIOUSLY PERFORMED
8 BY STATE EMPLOYEES, AN EMPLOYER SHALL PAY AN EMPLOYEE A WAGE RATE THAT
9 IS NOT LESS THAN THE GREATER OF:

10 (1) (I) THE STEP 1 RATE WITHIN THE LOWEST GRADE AT WHICH THE
11 POSITION WOULD BE CLASSIFIED IF THE WORK CONTINUED TO BE PERFORMED BY
12 STATE EMPLOYEES; AND

13 (II) EITHER COMPARABLE BENEFITS OR THE CASE EQUIVALENT OF
14 COMPARABLE BENEFITS; OR

15 (2) THE WAGE RATE REQUIRED UNDER THIS TITLE.

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

20 19-104.

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

23 (B) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
24 EMPLOYERS SUBJECT TO THIS TITLE AND:

25 (1) EXCEPT FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH
26 REGARD ONLY TO ITS OWN EMPLOYEES, MAY REQUIRE THAT AN EMPLOYER KEEP
27 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
28 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
29 ENFORCEMENT OF THIS TITLE; AND

30 (2) FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH REGARD
31 TO ITS OWN EMPLOYEES, MAY REQUIRE THAT THE PRINCIPAL UNIT KEEP RECORDS
32 AND SUBMIT REPORTS TO THE SECRETARY OF BUDGET AND MANAGEMENT THAT
33 THE SECRETARY DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION
34 AND ENFORCEMENT OF THIS TITLE.

35 (C) IN CONSULTATION WITH THE COMMISSIONER, EACH UNIT THAT
36 ADMINISTERS A STATE FINANCIAL ASSISTANCE PROGRAM SHALL ADOPT
37 REGULATIONS GOVERNING THE APPLICATION OF THIS TITLE TO RECIPIENTS OF
38 STATE ASSISTANCE SUBJECT TO THE PROVISIONS OF THIS TITLE.

1 19-105.

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

7 (B) THE UNIT MAY ONLY GRANT A WAIVER UNDER THIS SECTION AFTER:

8 (1) A REVIEW OF THE NOT-FOR-PROFIT ENTITY'S FINANCIAL
9 SITUATION, INCLUDING SALARY LEVELS OF THE ENTITY'S MANAGEMENT
10 PERSONNEL; AND

11 (2) A DETERMINATION THAT THE APPLICATION OF THIS TITLE WOULD
12 CAUSE AN UNDUE HARDSHIP ON THE ENTITY'S OPERATION.

13 19-106.

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

18 (1) THE LIVING WAGE RATE;

19 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

20 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
21 COMMISSIONER.

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

25 (C) (1) IF THE VIOLATION DOES NOT INVOLVE A STATE EMPLOYEE, AND
26 SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE COMMISSIONER
27 MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL PENALTY NOT
28 EXCEEDING \$50 PER VIOLATION.

29 (2) THE SECRETARY OF BUDGET AND MANAGEMENT MAY TAKE
30 APPROPRIATE ACTION UNDER THE STATE PERSONNEL MANAGEMENT SYSTEM
31 AGAINST ANY PRINCIPAL UNIT OR APPOINTING AUTHORITY OF A PRINCIPAL UNIT
32 THAT VIOLATES THIS SECTION WITH REGARD TO A STATE EMPLOYEE.

33 19-107.

34 (A) (1) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER
35 THIS TITLE IF THE COMPLAINT INVOLVES AN EMPLOYEE WHO IS NOT A STATE
36 EMPLOYEE.

1 (2) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL
2 INVESTIGATE A COMPLAINT UNDER THIS TITLE AGAINST A PRINCIPAL UNIT OF
3 STATE GOVERNMENT BY A STATE EMPLOYEE.

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) IN AN INVESTIGATION UNDER SUBSECTION (A) (1) OF THIS SECTION, AN
8 EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE COMMISSIONER OR THE
9 COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE, PAYROLL RECORDS, AND AN
10 OPPORTUNITY TO INTERVIEW EMPLOYEES FOR PURPOSES OF ENFORCING THIS
11 TITLE.

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

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

17 (3) THE NOTICE SHALL INCLUDE:

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

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

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

22 (I) SUBPOENA WITNESSES;

23 (II) ADMINISTER OATHS; AND

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

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

28 (I) ISSUE A DETERMINATION; AND

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

31 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
32 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
33 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 (A) IN A CASE INVOLVING AN EMPLOYEE OTHER THAN A STATE EMPLOYEE, IF
6 THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A PROVISION OF
7 THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE 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 (B) IN A CASE INVOLVING A STATE EMPLOYEE, IF THE SECRETARY OF
13 BUDGET AND MANAGEMENT DETERMINES THAT THE EMPLOYER VIOLATED A
14 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
15 EMPLOYER SHALL PAY RESTITUTION TO EACH AFFECTED EMPLOYEE.

16 19-109.

17 (A) (1) IF AN EMPLOYEE OTHER THAN A STATE EMPLOYEE IS PAID LESS
18 THAN THE WAGE RATE REQUIRED UNDER THIS TITLE, THE EMPLOYEE IS ENTITLED
19 TO SUE TO RECOVER TREBLE THE AMOUNT OF THE DIFFERENCE BETWEEN THE
20 WAGE RATE REQUIRED UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE
21 EMPLOYEE.

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

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

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

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

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

Article - Health - General

15-105.

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

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

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

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

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

(ii) The reimbursement rate for a hospital that has transferred outpatient oncology, diagnostic, rehabilitative, and digestive disease services to an off-site facility prior to January 1, 1999 shall be set according to the rates approved by the Health Services Cost Review Commission if:

1. The transfer of services was due to zoning restrictions at the hospital campus;

2. The off-site facility is surveyed as part of the hospital for purposes of accreditation by the Joint Commission on the Accreditation of HealthCare Organizations; and

3. The hospital notifies the Health Services Cost Review Commission in writing by July 1, 1999 that the hospital would like the services provided at the off-site facility subject to Title 19, Subtitle 2 of the Health - General Article.

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2000.

